EACB Key Messages and Comments

regarding Commission proposal for a Directive establishing a framework for the recovery and resolution of credit institutions and investment firms 'Crisis Management Directive'

26 November 2012

The voice of 5.900 local and retail banks, 51 million members, 181 million customers

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The **European Association of Co-operative Banks** (EACB) is the voice of the co-operative banks in Europe. It represents, promotes and defends the common interests of its 28 member institutions and of co-operative banks in general. Co-operative banks form decentralised networks which are subject to banking as well as co-operative legislation. Democracy, transparency and proximity are the three key characteristics of the co-operative banks' business model. With 4.000 locally operating banks and 63.000 outlets co-operative banks are widely represented throughout the enlarged European Union, playing a major role in the financial and economic system. They have a long tradition in serving 176 million customers, mainly consumers, retailers and communities. The co-operative banks in Europe represent 50 million members and 750.000 employees and have a total average market share of about 20%.

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EACB Key Messages

The EACB supports Commission's objective to create an effective recovery and resolution framework taking into account the 7 general principles set out in this context in the Commission's Communication of October 2010: 1) put prevention first, 2) provide for credible resolution tools, 3) enable fast and decisive action, 4) reduce moral hazard, 5) contribute to a smooth resolution of cross-border groups, 6) ensure legal certainty and 7) limit the distortions of competition.

However, we consider that a number of aspects, highly relevant for co-operative banks, need to be taken into account in this Directive and certain provisions require clarifications and adjustments.

The EACB's key concerns (specifically as regards the content of the Commission's proposal for a Banking Recovery and Resolution framework without taking the broader political context of the Banking Union into account) can be summarized as follows:

- ***Scope and principle of proportionality:*** The objective of the resolution framework is to avoid systemic risk and ensure financial stability. Following the FSB Key attributes the proposed Directive should in principle only be applied to systemically important financial institutions. In any case, we consider that there is a need for a strict application of the principle of proportionality throughout the Directive. A combination of the different factors such as size, nature, complexity, legal structure, focus of activity, interconnectedness and adherence to a cooperative solidarity systems should be taken into account (see pp. 7-10)
- ***Resolution Authorities:*** the main objective is to ensure the independence and accountability of the resolution authority, regardless in which national public administrative authority this function is placed, (see pp. 11-14)
- ***RRPs***: We acknowledge that prevention and preparation is crucial, therefore cooperative banks have their solidarity system which prevent the failure of any individual bank belonging to the network in place. Nonetheless, some EACB members welcome the Council's and partly the Rapporteur's proposal to waive the requirements to set up these plans for smaller cooperative banks.(see p.16)
- ***Group RRPs***: EACB favours the suggestion of Mr. Hökmark and Council to require mainly group RRPs A parallel structure or duplication of requirements should be avoided because of high administrative burdens and limited added value. (see pp. 18-21 and 26-27)
- ***Resolvability:*** We support the amendment of Mr. Hökmark to minimize the resolvability measures to the minimum (see p. 22-23)
- ***Early intervention***: It is necessary to ensure that the proposed measures on early intervention in this Recovery and Resolution framework and the DGS Directive are convergent (see p. 25)

  In addition, while we welcome that Mr. Hökmark is making an attempt to have a clearer a early intervention trigger, a quantitative EU early intervention trigger for all banks might be considered as an automatic trigger. We propose to maintain the Commission proposal to have a trigger when the own funds are breached together with the Council's proposal to allow banks to determine the triggers for the actions of the recovery plan (see pp. 26-27).

- ***Resolution***: the proposal of the Rapporteur to have a clear resolution trigger at point of non-viability of a bank which is convergent with the FSB is appreciated. However, it should be prevent that this is also considered as an automatic instigator for resolution action. Therefore all the conditions of Article 27 including paragraph 2 should be taken into account for resolution(see pp. 41-44)
- ***Objective of Bail in***: We support bail-in as a last resort resolution tool to accompany the orderly wind-down of a failing institution. However, it shall not be applied to a bank that has become gone concern such as to put it back on its feet (see p. 48)
- ***Bail in – Cooperative banks:*** There is a need to take certain particularities of co-operative banks on board especially with regard to the conversion of subordinated debt into equity, the minimum amount and the scope of eligible debt. It should be mentioned that the debt conversion mechanism will have serious consequences for the specific governance and ownership structure of co-operative banks (for instance debt holders become members of the bank). (see p. 49)
- ***Eligible liabilities for bail in***: we believe that the scope should be as broad as possible but should exclude individual depositors and covered bonds (see pp. 50-51)
- ***Amount of bail-inable liabilities*** We appreciate the suggestion of the Rapporteur that the minimum amount of bail-in liabilities shall be determined on the basis of the total risk weighted assets (see pp. 55-56)
- ***Financing:*** In case a resolution fund is required we would advocate for a specific target level and build up period for financing of a resolution fund. We cannot support the proposal of the Rapporteur to have an ex ante premium into the national budget as this would enhance the link between the banks and sovereigns. Furthermore national bank levies should be accountable as contributions to the financing agreements (see pp. 59-60)
- ***Use of DGS funds***: EACB is in favour of approach taken by the Commission. The options for Member States to choose either a DGS or to set up a new system as financing arrangement should be maintained especially considering the different ö DGS and IPS systems. (see pp. 61-63).
- ***Mutual solidarity:*** the EACB does not support the any borrowing or lending between schemes as there is no influence on the risk profile of institutions in other member states or of the fund itself (see p. 64) .

Preliminary Remarks

a) Introduction

The European Association of Co-operative Banks supports the Commission's objective to manage bank failures in an orderly way. Certainly, the recent crisis has underlined the importance of a proper functioning and effective recovery and resolution mechanism.

Nevertheless, the members of the EACB think that a number of aspects need to be taken into consideration with regard to the envisaged aims and the current situation.

b) Wider regulatory context

- There is a need to provide clarity and firm statements how this Bank Recovery and Resolution Directive (BRRD) Proposal fits into the current Banking Union framework and Commission's proposal on the single supervisory mechanism.
- Moreover, it will be essential for the co-legislators to ensure consistency across the files relating to the BRRD, in particular DGS and CRD IV/CRR which have been in the legislative procedure for a longer time and for which the state of discussion is therefore more advanced.
- In order to avoid overlaps in different legal acts and the need to consult different legal texts, it is necessary to exclusively address policy options in the designated legal act (i.e. address crisis management issues in this Directive and not in CRD or Banking Union files) and use cross-references when referring to other legislation.

c) Prevention and existing systems

- There should be a stronger focus on preventive action combined with effective national supervision. A stricter assessment by national supervisors of new and existing players and their business models, activities in Member State markets, should prevent future calls.
- In many Member States early intervention and preventive action have proven to be efficient means to achieve financial stability. Thus, going into resolution and using bail in should rather be a second choice than the standard situation.
- Efficiency should also be the key word when it comes to the financial burden. Over the next years banks will have to take considerable financial efforts to meet higher capital standards. In addition, EU legislation is on its way for a DGS fund together or separately with a Resolution fund. Moreover, banks in some Member States are currently subject to national banking a tax and/or a bank levy and already required to build up crisis resolution funds to mitigate the costs of financial crisis. Furthermore, in at least 11 Member States a Financial Transaction Tax will be realized. There is a need to avoid a double or even fourfold burden.

Scope

a) Level playing field

We welcome the fact that the proposed Directive is a framework which allows for some degree of national discretion. However, we consider that there is a need to take into account the level playing field aspect especially for cross border banks.

Suggestion for wording – Level Playing Field

Proposal for a Directive
Recital 6

Text proposed by the European Commission	*Suggestion for wording (EACB)*
Those obstacles should be eliminated and rules should be adopted in order to ensure that the internal market provisions are not undermined. To that end, rules governing the resolution of institutions should be made subject to common minimum harmonisation rules.	Those obstacles should be eliminated and rules should be adopted in order to ensure that the internal market provisions are not undermined. To that end, rules governing the resolution of institutions should be made subject to common minimum harmonisation rules ***and achieve a level playing field between credit institutions.***

b) Scope and Principle of proportionality

Following the G20 commitments and FSB Key Attributes[1], we expect in principle that the proposed regime should first and foremost be relevant for systemic-relevant credit institutions. Not all recovery and resolution tools are equally suitable for all sectors of the banking industry. The Directive should thus more clearly insist on, and bring forward, the importance of respecting the proportionality principle when being implemented.

As such, it is necessary to include a general and overall applicable principle of proportionality. Mentioning the principle in Art. 4 is not sufficient as it is limited to the provisions on recovery and resolution plans.

We consider also that additional parameters should be included in the principle of proportionality. The banking sector within the Union is diversified. Institutions should be distinguished based on factors beyond merely risk, size, and interconnectedness, . It is necessary to include the nature, scope and complexity, and the legal status of institutions. The latter is not necessarily encompassed in the concept of risk nor is it linked to the size. This is especially relevant for co-operative institutions which are by law different from joint-stock companies.

Furthermore, there is a need to acknowledge the existence of co-operative solidarity mechanisms which have an inherent function to perform prevention, when applying the requirements of this Directive.

Suggestion for wording – Principle of proportionality 1

Proposal for a Directive
Recital 10

Text proposed by the European Commission	*Suggestion for wording (EACB)*
National Authorities should take into account the risk, size and interconnectedness of an institution in the context of recovery and resolution plans and when using the different tools at their disposal, making sure that the regime is applied in an appropriate way.	National Authorities shall take into account the risk, size***, legal status, nature, scope and complexity of business activity,*** and interconnectedness of an institution and ***membership to an IPS and other cooperative solidarity systems as according to Art. 80(8) CRD and Art. 3 CRD when applying the requirements under this Directive*** and when using the different tools at their disposal, making sure that the regime is applied in ***a proprtionate*** and appropriate way.

Suggestion for wording – Principle of proportionality 2

Proposal for a Directive
Article 1a(new)

Text proposed by the European Commission	*Suggestion for wording (EACB)*
	The competent authorities shall ensure when establishing and applying the requirements

[1] Please see http://www.financialstabilityboard.org/publications/r_111104cc.pdf

	under this Directive and when using the different tools at their disposal to take account of risk, size, legal status interconnectedness, the nature, the scope and the complexity of the activities of institutions andmembership to an IPS and other cooperative solidarity systems as according to Art. 80(8) CRD and Art. 3 CRD.

Resolution Authority

a) ***Designation of Resolution Authority***

We favour the Commission's approach that Member states should be free to designate which authorities should be responsible for applying the resolution tools and exercise the powers provided. It is not necessary to exclude the national supervisor from the possibility of being the resolution authority as suggested by Rapporteur Hökmark. We consider that conflict of interest may not only occur in the combination of resolution – supervisory function. Moreover, as indicated by the Rapporteur excluding the national supervisors in some Member states for practical reasons is problematic.

Therefore, Commission's suggestion that Member States shall have rules and arrangement in place to avoid conflict of interest between the function of the relevant authority and its resolution function (c.f. Art. 3(3)) is most suitable. In order to meet the concern of the Rapporteur, the EACB would propose to take the Commission's suggestion one step further.

Our proposal is that when the resolution authority is placed within the supervisory authority, Ministry of Finance or other public administrative body, the Member State should report to EBA how that authority will and how it has practically put in place the national rules and arrangements (c.f. Art. 3(3)) to avoid a conflict of interest. This requirement to actively report the details to EBA could be added to Art. 3(8). Moreover, EBA could also make these reports public.

Suggestion for wording –Guarantee of objectivity/no conflict of interest

Proposal for a Directive
Article 3 paragraph 8

Text proposed by the European Commission	*Suggestion for wording (EACB)*
Member States shall inform European Banking Authority (EBA) of the national authority or authorities appointed as resolution authorities and contact authority and, where relevant, their specific functions and responsibilities. EBA shall publish the list of those resolution authorities.	Member States shall inform European Banking Authority (EBA) of the national authority or authorities appointed as resolution authorities and contact authority,their specific function, responsibilities***and guarantee of objectivity and neutrality***. And shall inform EBA of the way they have applied the requirement to avoid a conflict of interest referred to in paragraph 3 EBA shall publish the list ***and report on no conflict of interest*** of those resolution authorities.

b) Accountability of Resolution Authority

In order to ensure legal protection and certainty, we consider that the resolution authority as an independent public administrative body should be accountable under national law. Any measure or decision taken by the resolution authority should be subject to a right of appeal.

The proposal of the Council in Article 3(8a) of the compromise text of 15 November to have no accountability of resolution authorities and its staff at all, cannot at all be supported by the EACB. We suggest the following Amendment:

Suggestion for wording –Legal certainty

Proposal for a Directive
Article 3 paragraph 1

Text proposed by the European Commission	*Suggestion for wording (EACB)*
Each Member States shall designate one or more resolution authorities that are empowered to apply the resolution tools and exercise the resolution powers.	Each Member States shall designate one or more resolution authorities that are empowered to apply the resolution tools and exercise the resolution powers ***having regard to the national legal system***.

c) ***Sanctions for breach of confidentiality by Resolution Authority***

It is of utmost importance that resolution authorities respect the principle of confidentiality of information as mentioned in Article 76. Therefore, we suggest that any breach of this principle shall be subject to sanctions.

Suggestion for wording Sanctions breach of confidentiality

Proposal for a Directive
Recital/Article.100 (1a) new

Text proposed by the European Commission	*Suggestion for wording (EACB)*
....	***Member States shall lay down rules on administrtive sanctions and measures applicable to the infringement of Art. 76 paragraph 1 a and 2,***

Recovery Plans

a) Scope of application

Some members consider that the requirement to draw up a recovery plan should in principle only be applied to G-SIBs/D-SIBs following the FSB Key attributes.

Therefore, they welcome the Council suggestion to waive the set up of recovery plans for smaller banks as follows:

Suggestion for wording (Council draft compromise of 15 November)

Proposal for a Directive
Article 4 paragraph 1a (new)

Text proposed by the European Commission	*Suggestion for wording (EACB)*
	Member States shall provide that if competent authorities and, where relevant, resolution authorities consider that the failure of a specific institution due to, among other things, its size, its business model or its interconnectedness to other institutions, or to the financial system in general, will not have a negative effect on financial markets, other institutions or on funding conditions, either of the following requirements may be waived: ***i. the requirement for an institution to maintain recovery plans provided for in article 5(1) and the requirement to maintain a resolution plan in article 9(1), or*** ***ii. the requirement to update recovery and resolution plans at least annually provided for in Article 5(2) and the requirement to review the resolution plan at least annually provided for in Article 9(3).*** ***Following a change to the legal or organisational structure, business or financial situations of the institutions referred to in the first subparagraph, the competent authority and, where relevant, resolution authorities shall assess the continued relevance of the waivers provided for above.***

b) ***Recognition of Co-operative solidarity systems***

We appreciate the introduction of principle of proportionality in Art. 4 for recovery plans. Nevertheless, we argue for a stricter application of the principle of proportionality and the principle of subsidiarity for recovery and resolution plans by taking into account co-operative solidarity mechanism.

Cooperative banks have solidarity mechanisms in place which have the aim and objective to internally prevent or orderly intervene at an early stage. We consider it necessary that competent authority shall acknowledge and rely on these existing mechanisms for drawing up recovery and resolution plans in order to avoid the unnecessary imposition of administrative burdens on non systemic relevant co-operative banks. Especially, in case smaller institutions are required to draw up a recovery plan, their adherence to an IPS or cooperative solidarity system should explicitly be allowed and be recognised as an integral part of recovery plan.

Therefore, membership to an IPS or cooperative solidarity system should be explicitly mentioned in Art. 4 of this Directive.

Suggestion for wording

Proposal for a Directive
Article 4 paragraph 1

Text proposed by the European Commission	*Suggestion for wording (EACB)*
Having regard to the impact that the failure of the institution could have, due to the nature of its business, its size or its interconnectedness to other institutions or to the financial system in general, on financial markets, on other institutions, on funding conditions, Member States shall ensure that competent and resolution authorities determine the extent to which the following apply to institutions:	Having regard to the impact that the failure of the institution could have, due to**,** the nature of its business, its size or its interconnectedness to other institutions or to the financial system in general, on financial markets, on other institutions, on funding conditions, ***membership to an IPS as according to Art. 80(8) CRD or other cooperative solidairy systems as according to Art. 3 CRD.*** Member States shall ensure that competent and resolution authorities determine the extent to which the following apply to institutions:

c) Group recovery plans

We agree with Rapporteur Hökmark's and the Council's compromise text of 15 November that recovery plans should be drawn up at group level and would like to extend the notion of group to include co-operative group structures.

Requiring banks to provide both a group level plan and an individual plan for each entity will be an extra burden with no added value for banks operating through a subsidiaries structure rather than using branches. Drawing up a plans at each entity level should not be required, especially not at the level of cooperative local/regional banks.

The cooperative solidarity systems will interfere at an early stage and require specific recovery measures from the institution within the system. A parallel structure or duplication of requirements should be avoided because of high administrative burdens and limited added value. Co-operative solidarity schemes dispose of an overarching view to act in the best interest of the whole banking group. We therefore argue that a single group plan for the cooperative banks in a group (cf. Art. 2(25) and possibly Art. 2(7)) at the central level is sufficient. We do not see a need for individual/single plans for each part of a banking group. Moreover, decisions to apply a recovery tool or not should be made at mother company level, where the scope of available options is broader and the main financial resources are located.

Recovery plans must be prepared only at group level for affiliated banks in banking groups that meet the requirements in Article 3 CRD, Article 69(1) CRD and for institutions that adhere to schemes that ensure the solvency and liquidity according to Art 80(8) CRD. In case of the latter, for institutions which are members of an IPS, a recovery plan should only be required at IPS level.

For efficiency reasons, recovery plans should be blind to a banking group's structure and the requirement for single entity's plans should be removed. Therefore, we approve of AM 44 and of AM 45 of Rapporteur Hökmark and would like to have recognition of specific co-operative group structures:

Suggestion for wording

Proposal for a Directive
Article 5 paragraph 1

Text proposed by the European Commission	*Suggestion for wording (EACB)*
Member States shall ensure that each institution draws up and maintains a recovery plan providing, through measures taken by the management of the institution or by a group entity, for the restoration of its financial situation following significant deterioration. Recovery plans shall be considered as a governance arrangement within the meaning of Article 22 of Directive 2006/48/EC.	Member States shall ensure that each institution ***that is not part of a group subject to consolidated supervision pursuant to Article 3, Articles 125 and 126 of Directive 2006/48/EC or part of a cooperative solidarity system according to Aricle 80(8) of Directive 2006/48/EC*** draws up and maintains a recovery plan providing, through measures taken by the management of the institution or by a group entity for the restoration of its financial situation following significant deterioration. Recovery plans shall be considered as a governance arrangement within the meaning of Article 22 of Directive 2006/48/EC.

In case there is no general exemption for smaller banks following suggestion of the Council (see p. 16 above), we would prefer group plans only at consolidated or IPS level. We would as such propose the following amendments:

Suggestion for wording Group recovery plans 1

Proposal for a Directive
Article 7 paragraph 1

Text proposed by the European Commission	*Suggestion for wording (EACB)*
Member States shall ensure that parent undertakings or institutions that are subject to consolidated supervision pursuant to Articles 125 and 126 of Directive 2006/48/EC draw up and submit to the consolidating supervisor a group recovery plan that includes a recovery plan for the whole group, including for the companies referred to in points (c) and (d) of Article 1, as well as a recovery plan for each institution that is part of the group.	Member States shall ensure the parent undertaking, institutions that are subject to consolidated supervision pursuant to ***Article 3*** and Articles 125 and 126 of Directive 2006/48/EC, ***or by a cooperative solidarity system according to Art. 3and Art. 80 (8) of Directive 2006/48/EC*** draw up and submit a recovery plan that includes a plan for the whole group or the entire solidarity scheme

Suggestion for wording Group recovery plans 2

Proposal for a Directive
Article.7 paragraph 1

Text proposed by the European Commission	*Suggestion for wording (EACB)*
Member States shall ensure that parent undertakings or institutions that are subject to consolidated supervision pursuant to Articles 125 and 126 of Directive 2006/48/EC draw up and submit to the consolidating supervisor a group recovery plan that includes a recovery plan for the whole group, including for the companies referred to in points (c) and (d) of Article 1, as well as a recovery plan for each institution that is part of the group	Member States shall ensure that parent undertakings or institutions that are subject to consolidated supervision pursuant to Articles 125 and 126 of Directive 2006/48/EC draw up and submit to the consolidating supervisor a group recovery plan that includes a recovery plan for the whole group, including for the companies referred to in points (c) and (d) of Article 1, ~~***as well as a recovery plan for each institution that is part of the group.***~~

Suggestion for wording Group recovery plans 3

Proposal for a Directive
Article.7 paragraph 4

Text proposed by the European Commission	*Suggestion for wording (EACB)*
The group recovery plan shall include for the whole group and for each of its entities the elements and arrangements provided in Article 5. It shall also include, where applicable, arrangements for possible intra-group financial support adopted in accordance with any agreement for group financial support that has been concluded in accordance with Article 16	The group recovery plan shall include for the whole group ~~***and for each of its entities***~~ the elements and arrangements provided in Article 5. It shall also include, where applicable, arrangements for possible intra-group financial support adopted in accordance with any agreement for group financial support that has been concluded in accordance with Article 16

d) Assessment of recovery plans

We agree that (group) recovery plans shall be reviewed and assessed by the resolution authorities as stated in Art. 6(3) and Art. 8. However, we consider that this assessment should be carried out in close cooperation and in coordination with the relevant institution. In order to ensure that the requirements for a revised recovery plan are practicable, realistic and are not overburdening the institutions, it is necessary to enter into a dialogue with the relevant institution. Therefore, we suggest integrating such cooperation in Art. 6(2).

In addition, Recovery plans are drawn up in normal economic times for the preparation of future events, as a prevention and planning measure. Therefore, at this stage no compulsory interventions should be foreseen in case a recovery plan is not up to standard. It is unjustified that shortcomings in a recovery plan should have far reaching consequences as a failure to comply with the capital requirements.

Therefore, we concur with Rapporteur Hökmark in AM 45 and suggest to delete Art. 6(4) in its entirety.

Suggestion for wording

Proposal for a Directive
Article 6para. 2

Text proposed by European Commission	*Suggestion for wording*
2. The competent authorities shall review those plans and assess the extent to which each plan satisfies the requirements set out in Art. 5 and the following criteria.	2. The competent authorities shall review those plans ***in coordination with the relevant institution*** and assess the extent to which each plan satisfies the requirements set out in Art. 5 and the following criteria.

Suggestion for wording

Proposal for a Directive
Article 6para. 4

Text proposed by European Commission	*Suggestion for wording*
4. If the institution fails to submit a revised recovery plan, or if the competent authority determines that the revised recovery plan does not adequately remedy the deficiencies or potential impediments identified in its original assessment, the competent authorities shall require the institution to take any measure it considers necessary to ensure that the deficiencies or impediments are removed. In addition to the measures that may be required in accordance with Article 136 of Directive 2006/48/EC, the competent authorities may, in particular, require the institution to take actions to:	***deleted***

(a) facilitate the reduction of the risk profile of the institution; (b) enable timely recapitalisation measures; (c) make changes to the firm strategy; (d) make changes to the funding strategy so as to improve the resilience of the core business lines and critical operations; (e) make changes to the governance structure of the institution.	

e) Confidentiality of Recovery Plans

Such recovery plans are commercially highly sensitive so we would favour the imposition of confidentiality requirements in this respect. Article 76 is restricted to persons only and should be made more concrete and should include recovery and resolution plans.

Banks should not be required to disclose all or parts of RRP, nor should other authorities be able to do so to the public. In order to ensure confidentiality of the plans, the information flow must be carefully and precisely framed. Responsibility for the respect of confidentiality also needs to be allocated: we suggest that under a strict confidentiality agreement the home/consolidating authority would be the single point of entry of the plans. The home supervisor would thus be responsible for information sharing with other competent authorities under a similar confidentiality agreement and on a "need to know basis" only. Financial institutions should be informed (consulted) about which authority has received all or part of the plan.

Finally, the Commission nor Rapporteur Hökmark have provided for any sanction in case of breach of confidentiality requirements. We consider that this must be addressed.

Suggestion for wording Confidentiality recovery plans 1

Proposal for a Directive
Recital/Article.76 paragraph 1a (new)

Text proposed by the European Commission	*Suggestion for wording (EACB)*
....	***The requirements of professional secrecy shall be binding in respect of the following issues:*** ***a)*** ***Recovery plans*** b) ***Resolution plans, and*** ***c)*** ***All combined associated correspondence in particular between national competent authorities and institutions and within supervisory colleges***

Suggestion for wording Confidentiality recovery plans 2

Proposal for a Directive
Recital/Article. 76 paragraph 1b (new)

Text proposed by the European Commission	*Suggestion for wording (EACB)*
....	***The consolidating supervisor shall ensure that the requirements of professional secrecy are respected when applying the procedure laid down in Art. 7(1)***

Suggestion for wording Sanctions breach of confidentiality

Proposal for a Directive
Recital/Article.100 (1a) new

Text proposed by the European Commission	*Suggestion for wording (EACB)*
....	***Member States shall lay down rules on adminisatrtive sanctions and measures applicable to the infringement of Art. 76 paragraph [1a] new and [1b] new and national provisions adopted in the implementation of this Directive and shall take all measures necessary to ensure that they are implemented.***

Resolution Plans

a) Scope and principle of proportionality

Some members of the EACB are in favour of the suggestion of Rapporteur Hökmark and the Council in Article 4(1a) of the compromise text of 15 November to allow competent authorities to waive the requirement to prepare a resolution plan based on the assessment that an institution of group is not of systemic importance. However, it is considered that this should also be reflected in the relevant provisions. As such we would propose to insert a provision under Article 9(1).

Moreover, it is in any case necessary that that the principle of proportionality should be is strictly applied and cooperative solidarity systems are acknowledged for the requirement to draw up a resolution plan.

Suggestion for wording

Proposal for a Directive
Article. 9 paragraph 1a new

Text proposed by the European Commission	*Suggestion for wording (EACB)*
	The obligation to draw up and maintain a resolution plan plan is not necessary for those institutions for which the failure, due to its reduced size or limited interconnectedness to other institutions or to the finanial system in general, would not have both in the case of an idiosyncratic event or at time of broader financial instability or system wide events, an adverse effect on financial stability including throuh contagion to other institutions.

Suggestion for wording

Proposal for a Directive
Article 4 paragraph 1

Text proposed by the European Commission	*Suggestion for wording (EACB)*
Having regard to the impact that the failure of the institution could have, due to the nature of its business, its size or its interconnectedness to other institutions or to the financial system in general, on financial markets, on other institutions, on funding conditions, Member States shall ensure that competent and resolution authorities determine the extent to which the following apply to institutions:	Having regard to the impact that the failure of the institution could have, due to the nature of its business, its size or its interconnectedness to other institutions or to the financial system in general, on financial markets, on other institutions, on funding conditions, ***membership to an IPS or other cooperative isolidarity systems as according to Art. 80(8) CRD and Art. 3 CRD.*** Member States shall ensure that competent and resolution authorities determine the extent to which the following apply to institutions:

b) Group Resolution plans

We consider that resolution plans should be required only at group level. Although we recognise that resolution techniques may be applied at the legal entity level, we think group plans are most suitable, especially for co-operative banks.

Based on the group structure and relative significance of its subsidiaries, group level plans can contain contributions of the relevant entities and be activated and applied where necessary in the group. Moreover, decisions to apply a resolution tool or not should be made for co-operative banks at central level, where the scope of available options is broader and the main financial resources are located.

Cooperative solidarity schemes dispose of an overarching view to act in the best interest of the whole banking group. We therefore argue that a single group plan for the cooperative banks in a group (cf. Art. 2(25) and possibly Art. 2(7)) at the central level is sufficient. We do not see a need for individual/single plans for each part of a banking group.

Therefore, we consider that resolution plans must be prepared only at group level for affiliated banks in banking groups that meet the requirements in Article 3 CRD and Article 69(1) CRD (Directive 2006/48/EC) or for institutions that adhere to schemes that ensure the solvency and liquidity according to Art 80(8) CRD. It should not be required at entity level, especially not at the level of cooperative local/regional banks.

We suggest to make the necessary changes in the relevant provisions as indicated below.

Suggestion for wording Group recovery plans

Proposal for a Directive
Article.9 paragraph 1

Text proposed by the European Commission	*Suggestion for wording (EACB)*
Resolution authorities, in consultation with competent authorities, shall draw up a resolution plan for each institution that is not part of a group subject to consolidated supervision pursuant to Articles 125 and 126 of Directive 2006/48/EC. Resolution plan shall provide for the resolution actions which the resolution and competent authorities may take where the institution meets the considtions for resolution.	Resolution authorities, in consultation with competent authorities, shall draw up a resolution plan for each institution that is not part of a group subject to consolidated supervision pursuant to ***Article 3*** and Articles 125 and 126 of Directive 2006/48/EC ***or part of a system according to Art. 80 (8) of directive 2006/48/EC***. Resolution plan shall provide for the resolution actions which the resolution and competent authorities may take where the institution meets the considtions for resolution

Suggestion for wording Group recovery plans

Proposal for a Directive
Article.11 paragraph 1

Text proposed by the European Commission	*Suggestion for wording (EACB)*
Member States shall ensure that resolution authorities draw up group resolution plans. Group resoluition plans shall include both a plan for resolution at the level of the parent undertakings or institution subject to consolidated supervision pursuant to Articles 125 and 126 of Directive 2006/48/EC and resolution plans for the individual subisdiary institution drawn up in accordance with Article 9 of this Directive. The Group resolution plans shall also include plans for resolution of the the companies referred to in points (c) and (d) of Article 1, and plans for the resolution of institutions with branches in outher Member States in compliance with the provisions of Directive 2001/24/EC.	Member States shall ensure that resolution authorities draw up group resolution plans. Group resoluition plans shall ***consist of*** ~~include both~~ a plan for resolution at the level of the parent undertakings or institution subject to consolidated supervision pursuant to ***Article 3***, Articles 125 and 126 of Directive 2006/48/EC ***or at the level of a system according to Art. 80 (8) of directive 2006/48/EC***.~~and resolution plans for the individual subisdiary institution~~ drawn up in accordance with Article 9 of this Directive. The Group resolution plans shall also include plans for resolution of the the companies referred to in points (c) and (d) of Article 1, and plans for the resolution of institutions with branches in outher Member States in compliance with the provisions of Directive 2001/24/EC.

c) ***Assessment of recovery plans***

We agree that (group) resolution plans shall be set up by the resolution authorities as stated in Art. 9(1) and (3). However, we consider that the drawing up of such plans should be carried out in close cooperation and in coordination with the relevant institution. In order to ensure that the requirements for a resolution plan are practicable, realistic and are not overburdening the institutions, it is necessary to enter into a dialogue with the relevant institution.

Therefore, we appreciate to a large extent the suggestion as proposed by the Council to integrate such cooperation in Art. 9(1).

Suggestion for wording

Proposal for a Directive
Article 9para. 1

Text proposed by European Commission	*Suggestion for wording*
Resolution authorities, in consultation with competent authorities, shall draw up a resolution plan for each institution that is not part of a group subject to consolidated supervision pursuant to Articles 125 and 126 of Directive 2006/48/EC. Resolution plan shall provide for the resolution actions which the resolution and competent authorities may take where the institution meets the conditions for resolution.	Resolution authorities, in consultation with competent authorities ***and with the institution concerned*** shall draw up a resolution plan for each institution that is not part of a group subject to consolidated supervision pursuant to Articles 125 and 126 of Directive 2006/48/EC. Resolution plan shall provide for the resolution actions which the resolution and competent authorities may take where the institution meets the conditions for resolution..

f) Confidentiality of Resolution Plans

Resolution plans are commercially highly sensitive, so we would favour the imposition of confidentiality requirements in this respect. Article 76 is restricted to persons only and should be made more concrete and should include recovery and resolution plans.

Banks should not be required to disclose all or parts of RRP, nor should other authorities be able to do so to the public. In order to ensure confidentiality of the plans, the information flow must be carefully and precisely framed. Responsibility for the respect of confidentiality also needs to be allocated. We suggest that under a strict confidentiality agreement the home/consolidating authority would be the single point of entry of the plans. The home supervisor would thus be responsible for information sharing with other competent authorities under a similar confidentiality agreement and on a "need to know basis" only. Financial institutions should be informed (consulted) about which authority has received all or part of the plan.

Finally, the Commission nor Rapporteur Hökmark have not provided for any sanction in case of breach of confidentiality requirements. We consider that this must be addressed.

Suggestion for wording Confidentiality recovery plans 1

Proposal for a Directive
Recital/Article.76 paragraph 1a (new)

Text proposed by the European Commission	*Suggestion for wording (EACB)*
....	***The requirements of professional secrecy shall be binding in respect of the following issues:*** ***a) Recovery plans*** b) ***Resolution plans, and*** c) ***All combined associated correspondence in particular between national competent authorities and institutions and within supervisory colleges***

Suggestion for wording Confidentiality recovery plans 2

Proposal for a Directive
Recital/Article. 76 paragraph 1b (new)

Text proposed by the European Commission	*Suggestion for wording (EACB)*
....	***The consolidating supervisor shall ensure that the requirements of professional secrecy are respected when applying the procedure laid down in Art. 7(1)***

Suggestion for wording Sanctions breach of confidentiality

Proposal for a Directive
Recital/Article.100 (1a) new

Text proposed by the European Commission	*Suggestion for wording (EACB)*
....	***Member States shall lay down rules on adminisatrtive sanctions and measures applicable to the infringement of Art. 76 paragraph [1a] new and [1b] new and national provisions adopted in the implementation of this Directive and shall take all measures necessary to ensure that they are implemented.***

Resolvability

a) Resolvability measures

We appreciate the proposal of Rapporteur Hökmark to reduce the resolvability measures of resolution authorities in order to remove impediments to resolution in Art. 14.

We agree that in a phase of preparation the powers proposed are too intrusive and far-reaching. The proposal of the Rapporteur to delete in Art. 14(4) paragraphs s (b) and (d)-(i),is already considerable. However, we suggest that also subparagraph (j) is also taken out as this is a measure which would have an impact on the structure. This exactly one of the issues that should be avoided as stated in the justification to AM 59 of the Draft Report

Therefore, we would also suggest in addition to AMs 63-69 to also delete subparagraph (j):

Suggestion for wording

Proposal for a Directive
Article 14 paragraph 4 lit (j)

Text proposed by the European Commission	*Suggestion for wording (EACB)*
(j) where an institution is the subsidiary of a mixed-activity holding compant, requireing that the mixed-activity holding company set up a seperate financial holding company to control the institution, if this is necssary in order to facilitate the resolution of the institution and to avoid the application of the resolution tools and powers specified in Title IV having an adverse effect on the non-fonancial part of the group.	***Deleted***

b) ***Resolvability measures***

In any case we consider that if a resolvability assessment leads to a necessary intervention by the resolution authority via the remaining measures in Art. 14(4)(a) and (c), it is important to require that this assessment is undertaken in conjunction with the bank and the potential subsequent decisions discussed with the bank in order to avoid any misunderstanding. Therefore, we appreciate the suggestions to make resolvability part of the resolution plan and provide a active role for the parent undertaking to provide for a suitable resolving measures.

Secondly, the resolution authority should be obliged to deliver a formal decision with clear arguments of non-resolvability, against which the credit institution should have a right to appeal with suspense effect. The rights of intervention of the resolution authority (e.g. Art 14) may violate fundamental rights of the credit institutions in normal economic times. Therefore procedures in accordance with the rule of law should be established.

We propose to introduce reference to procedures in accordance with the rule of law in Art. 14(6)

Suggestion for wording

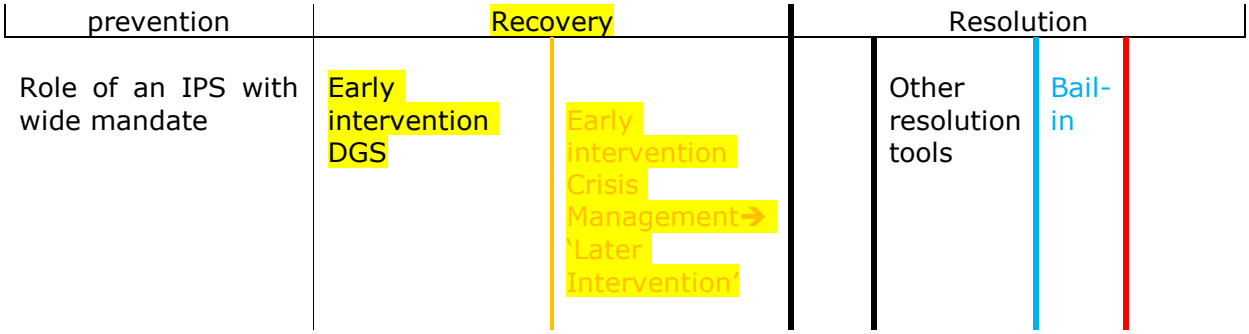
Proposal for a Directive
Article 14 paragrah 6

Text proposed by European Commission	*Suggestion for wording*
6. A notification made pursuant to paragraph 1 or 3 shall meet the following requirements: (a) it shall be supported by reasons for the assessment or determination in question; (b) it shall indicate how that assessment or determination complies with the requirement for proportionate application set out in Article 9.	6. A notification made pursuant to paragraph 1 or 3 shall meet the following requirements: (a) it shall be supported by reasons for the assessment or determination in question; (b) it shall indicate how that assessment or determination complies with the requirement for proportionate application set out in Article 9. ***(c) Member States shall ensure that notifications and measures taken in pursuance of this Article are subject to the right of appeal with suspense effect before an independent body.***

Early Intervention

a) ***Definition***

In relation to the DGS Directive, in our opinion the definition of early intervention in that directive refers to 'early' recovery phase with possibility to use DGS/IPS fund, while CMD/BRRD seems to refer to 'later' recovery phase almost towards resolution.



We consider that the DGS Directive's definition should be broad in order to encompass the whole recovery phase. In the BRRD a reference should be made to the DGS Directive.

Suggestion for wording

Proposal for a Directive
Article2 paragraph 1 subaragraph b (new)

Text proposed by the European Commission	*Suggestion for wording (EACB)*
....	***'early intervention' means any action taken by a competent authority, or any preventive and supportive measures taken by the DGS where allowed or by the IPS in consultation with competent a authority before a resolution phase is formally declared***.

b) Triggers conditions

In principle, we appreciate Mr. Hökmark's intention to create legal certainty as regards the trigger point for early intervention. However, we still have reservations as regards the suggested trigger for early intervention

The specification of Mr. Hökmark that the trigger shall apply in case of a breach of the own fund requirements is useful. Nevertheless, Amendment 73 of Mr. Hökmark does not take away the uncertainty by maintaining the notion of 'likely' to breach the own funds requirements. It seems more appropriate and in line with the CRD IV if intervention by competent authorities should take place after the bank has breached the own fund requirements. We thus consider that there is no need for a concrete quantitative trigger as this could create an automatic instigator.

With regards to likely to breach, it should be mentioned that the task of the supervisors is to monitor the banks on a daily basis and it is necessary to maintain clear and harmonised supervisory guidelines. In case there is a sudden considerable reduction in the Tier 1 Ratio there is a clear case for supervisors to intervene. In case of a gradual decrease of the tier 1 ratio supervisors shall give warnings, be more vigilant and enter into a dialogue with the institution, but should not be able to intervene. In order to have certainty for supervisors and avoid different interpretations across the board, only when the required own fund requirement is breached they shall intervene. Moreover, banks themselves given the increased own fund requirements are more prudent and determined to maintain the own funds at the levels required.

Therefore, we consider that the notion of 'likely' should be taken out of Article 23, as it too vague and subject to different supervisory interpretation (especially in case of a gradual decrease of the Tier 1 ratio).

In addition, we suggest to consider this issue in conjunction with the triggers for the measures in the recovery phase (see next page 37)

Suggestion for wording

Proposal for a Directive
Article 23 first sentence

Text proposed by European Commission	*Suggestion for wording*
Where an institution does not meet **or is likely to breach** the requirements of Directive 2006/48/EC, Member States shall ensure that the competent authorities have at their disposal, in addition to the measures referred to in Art 136 of Directive 2006/48/EC where applicable, in particular, the following measures:	Where an institution does not meet the ***own fund*** requirements of Directive 2006/48/EC, Member States shall ensure that the competent authorities have at their disposal, in addition to the measures referred to in Art 136 of Directive 2006/48/EC where applicable, in particular, the following measures:

c) Triggers conditions for recovery plan action

In relation to the early intervention trigger, the EACB welcomes the Council's suggestion to have a trigger framework in recovery plans which are set by the banks themselves. This allows for flexibility and takes account of the differences between credit institutions and the markets in which they operate. Thus, we appreciate Article 8a of the Council draft compromise of 15 November. Nevertheless, it should be prevented that these triggers would entail an increase in the capital requirements.

In addition, we consider it counterintuitive to provide EBA with a mandate to draft binding technical regulatory standards to determine the qualitative and quantitative indicators for banks to set these triggers. These standards will be issued in the form of a Regulation which is contrary to the fact that recovery plans are drawn up by the institution itself. As said these recovery plans are a means for institutions to prepare and plan ahead, and should thus not be subject to binding regulation.

Thus we appreciate Article 8a(1) but suggest to delete Article 8a(2) of the Council draft compromise of 15 November.

Suggestion for wording (Council draft compromise dd. 15 November)

Proposal for a Directive
Article 8a paragraph 1 (new)

Text proposed by European Commission	*Suggestion for wording*
	For the purpose of Articles 5 to 8, competent authorities shall ensure that each recovery plan includes a trigger framework established by the institution which identifies the points at which appropriate actions referred to in the plan will or may be taken. The triggers may be expressed by reference to qualitative and quantitative indicators relating to the institution's financial strength and must be forward looking and capable of being monitored easily. Competent authorities shall ensure that institutions put in place appropriate arrangements for the regular monitoring of the indicators. ***Notwithstanding the first subparagraph, an institution may take action under its recovery plan where the relevant trigger has not been met, but where the management of the institution considers it appropriate due to the circumstances.***

*d) **Special management***

We are in favour of the suggestions of the Rapporteur to move the early intervention measure: introduction of special management to the resolution phase.

The powers of the special manager are much too intrusive as it can modify i.a. the internal structure of an organization. We agree with the rapporteur that the ability of the shareholders to fully control the institution is a fundamental part of the institution that should remain with the shareholders in the recovery phase.

Therefore we strongly support the *Amendments 13 and 14 and especially Amendment 77* of the Draft Report.

e) ***Recognition of Cooperative solidarity systems***

A key element of European co-operative banks is that they have established solidarity schemes a long time ago. The aim of these schemes is to prevent the failure of any individual bank belonging to the network. The aspects of collaboration and mutual support are deeply rooted in the co-operative philosophy. Most of the existing support schemes have been in operation for a long time. As these systems do prevention, early intervention and use resolution tools, it seems desirable to acknowledge their role in the crisis management framework.

The importance of IPS should be addressed also in the context of the early intervention instruments. In their day by day functioning, they perform core functions and fully meet the objectives laid down in this proposal without any recourse to public funds. They have a consolidated experience in early interventions, recovery and resolution plans, statutory mechanism for financial support to members, etc. They should therefore be taken into account in Art. 25.

Moreover, banking groups that meet the requirements in Article 3 CRD and Article 69(1) CRD (Directive 2006/48/EC) have mutual guarantee schemes in place. These guarantee systems may provide for: a) top-down guarantee b) a two-way guarantee (i.e. a guarantee by the central body of each affiliated institution and vice-versa); or c) a cross-guarantee (i.e. a guarantee (a) by the central body of each affiliated institution, (b) a guarantee by each affiliated institution of the central body, and (c) a guarantee by each affiliated institution and the central body of all other affiliated institutions).These ensure that there are no legal or practical impediments to the prompt transfer of own funds and liquidity within the Group to ensure that the obligations to creditors of the central body and its affiliates can be fulfilled.

Therefore, it should be recognised in relevant provisions of the Directive.

Suggestion for wording

Proposal for a Directive
Recital 23(new)

Text proposed by the European Commission	*Suggestion for wording (EACB)*
	Early interventions measures include also measures taken by a DGS, an IPS or a ***cooperative solidarity system according to and Art. 3 and Art. 80 (8) Directive 2006/48/EC as supportive or preventive measures. In these cases, preventive or supportive measures may also take the form of granting guarantees, loans and all types of liquidity and capital assistance, including satisfying third-party claims***

Suggestion for wording

Proposal for a Directive
Article 25 paragraph 1a (new)

Text proposed by the European Commission	*Suggestion for wording (EACB)*
	1.a When a competent authority intends to take a measure in accordance with Article 23 and 24 with regard to an institution that is affiliated to an institutional protection scheme or other cooperative solidarity systems according to Article 80(8) of directive 2006/48/EC or DGS according to Art. 1 of the revised version of the DGS-Directive shall consult with such scheme and summon the scheme to take measures necessary to ensure the compliance with the requirements of directive 2006/48/EC.
1. Where the conditions for the imposition of requirements under Article 23 of this Directive or the appointment of a special manager in accordance with Article 24 of this Directive are met in relation to a parent undertaking or an institution subject to consolidated supervision pursuant to Articles 125 and 126 of Directive 2006/48/EC or any of its subsidiaries, the competent authority that intends to take a measure in accordance with those Articles shall notify other relevant competent authorities within the supervisory college and EBA of its intention.	1. Where the conditions for the imposition of requirements under Article 23 of this Directive or the appointment of a special manager in accordance with Article 24 of this Directive are met in relation to a parent undertaking or an institution subject to consolidated supervision pursuant to Articles 125 and 126 of Directive 2006/48/EC or any of its subsidiaries, the competent authority that intends to take a measure in accordance with those Articles shall notify other relevant competent authorities within the supervisory college and EBA of its intention.

Resolution

a) ***Trigger conditions***

The EACB welcomes the rapporteur's suggested amendments 83 and 84 to have a more clear resolution trigger that is also aligned with the FSB Key attributes. However, it should be prevented that it is used a single and automatic trigger. All the conditions in Article 27(1) and (2) should be considered before entering into resolution.

We agree that it should be ensured that resolution is the "last resort" alternative used only when a bank is very close to insolvency i.e. no longer viable to operate based on the own funds requirements. However, this precision of the rapporteur is overshadowed by maintaining the notion of 'failing or likely to fail'.

It is important that the trigger events' in the directive are defined as clearly and precise as possible. This is of crucial importance for the legal certainty. And also for the reason that such a trigger provides the resolution authority with additional tools (i.e. it "opens the Toolbox").

In order to have a more clear resolution trigger we suggest to delete failing or likely to fail. Accordingly Art. 27(2) should be changed.

Suggestion for wording

Proposal for a Directive
Article.27 paragraph 1

Text proposed by the European Commission	*Suggestion for wording (EACB)*
(a) the competent authority or resolution authority determines that the institution i***s failing or likely to fail***;	(a) the competent authority or resolution authority determines that the institution ***no longer viable to operate within its authorization based on the own funds requirements provided for in Article 87 of Regulation (EU) No …/2012 of the European parliament and of the Council*** ~~***.is failing or likely to fail***~~;

Resolution authorities should call a resolution situation by issuing a formal decision and exercise the resolution powers only at the point of non-viability of a bank (failing or likely to fail). The decision to consider an institution as non-viable should depend on a case by case assessment by the authorities of the facts that have given place to the problems, and simultaneously take into consideration a set of triggers or criteria available. It should be ensured that resolution is the "last resort" alternative.

Furthermore, it is also quite unclear at what time the resolution authority is allowed to apply the resolution tools. The triggers for entry into resolution are quite different.

In terms of qualitative trigger - even for reasons of legal certainty - it should be ensured that the authority has the obligation to state reasons with regard to the existence of clearly defined criteria.

In terms of setting different triggers, including in the CRR, CMD, and DGS the relationship to each other should be clarified.

Suggestion for wording

Proposal for a Directive
Article.27 paragraph 2

Text proposed by the European Commission	*Suggestion for wording (EACB)*
2. For the purposes of point (a) of paragraph 1, an institution is deemed failing or likely to fail in one or more of the following circumstances:	2. For the purposes of point (a) of paragraph 1, an institution is deemed failing or likely to fail in one or more of the following circumstances:
(a) the institution is in breach ***or there are objective elements to support a determination that the institution will be in breach, in the near future,*** of the capital requirements for continuing authorisation in a way that would justify the withdrawal of the authorisation by the competent authority because the institution has incurred ***or is likely to incur*** in losses that will deplete all or substantially all of its own funds;	(a) the institution is in breach ~~***or there are objective elements to support a determination that the institution will be in breach, in the near future,***~~ of the capital requirements for continuing authorisation in a way that would justify the withdrawal of the authorisation by the competent authority because the institution has incurred ~~***or is likely to incur***~~ in losses that will deplete all or substantially all of its own funds;
(b) the assets of the institution are or there are objective elements to support a determination that the assets of the institution will be, in the near future, less than its liabilities;	~~***(b) the assets of the institution are or there are objective elements to support a determination that the assets of the institution will be, in the near future, less than its liabilities;***~~
(c) the institution is or there are objective elements to support a determination that the institution will be, in the near future, unable to pay its obligations as they fall due;	(c) the institution is or there are objective elements to support a determination that the institution will be, in the near future, unable to pay its obligations as they fall due ***and a forecast states a gone concern scenario;***
(d) the institution requires extraordinary public financial support except when, in order to preserve financial stability, it requires any of the following: ***(i) a State guarantee to back liquidity facilities provided by central banks according to the banks' standard conditions (the facility is fully secured by collateral to which haircuts are applied, in function of its quality and market value, and the central bank charges a penal interest rate to the beneficiary); or*** ***(ii) a State guarantee on newly issued liabilities in order to remedy a serious disturbance in the economy of a Member State.*** ***In both cases mentioned in points (i) and (ii), the guarantee measures shall be confined to solvent financial institutions, shall not be part of a larger aid package, shall be conditional to approval under State aid rules, and shall be used for a maximum duration of three months.*** ***3. For the purposes of point (c) of paragraph 1, a resolution action shall be treated as in the public***	***(deleted)***

interest if it achieves and is proportionate to one or more of the resolution objectives as specified in Article 26 and winding up of the institution or parent undertaking under normal insolvency proceedings would not meet those resolution objectives to the same extent. ***4. EBA shall issue guidelines, in accordance with Article 16 of Regulation (EU) No 1093/2010 to promote the convergence of supervisory and resolution practices regarding the interpretation of the different circumstances when an institution shall be considered as failing or likely to fail. EBA shall develop these guidelines at the latest by the date provided for in the first subparagraph of Article 115(1) of this Directive.*** ***5. The Commission, taking into account, where appropriate, the experience acquired in the application of EBA guidelines, shall adopt delegated acts in accordance with Article 103 aimed at specifying the circumstances when an institution shall be considered as failing or likely to fail.***	

b) Application Resolution Tools

When applying resolution tools the resolution authorities should be obliged to consider the characteristics of the legal status of cooperative banks.

Not all resolution tools may be applied in the same way to all credit institution. For example the application of bail-in tools on cooperative banks is quite problematic as in cooperative banks there is the principle of "one member, one vote", which means that independently of the paid amount or the amount of hold shares in cooperative banks, that one member may never have more than one vote in a voting.

Furthermore, it would be difficult for cooperative banks to hold the minimum amount of bail-in able liabilities, as the often do not have an access to capital markets. In any case it must be guaranteed, that always the least intrusive means should be applied.

Therefore, a paragraph should be inserted and the a general principle of proportionality should be introduced

Suggestion for wording

Proposal for a Directive
Article 27 paragraph 1 a new

Text proposed by European Commission	*Suggestion for wording*
	Member States shall ensure that the resolution tools are applied in accordance with the principle of proportionality and in accordance with the legal form of a credit institution. In any case Member States shall ensure that the national authorities avoid a discrimination of a legal form of a credit institution when applying a resolution tool.

Suggestion for wording – Principle of proportionality 1

Proposal for a Directive
Recital 10

Text proposed by the European Commission	*Suggestion for wording (EACB)*
National Authorities should take into account the risk, size and interconnectedness of an institution in the context of recovery and resolution plans and when using the different tools at their disposal, making sure that the regime is applied in an appropriate way.	National Authorities shall take into account the risk, size***, business activity*** and interconnectedness of an institution ***when applying the requirements under this Directive*** ~~in the context of recovery and resolution plans~~ and when using the different tools at their disposal, making sure that the regime is applied in a proprtionate and appropriate way.

Suggestion for wording – Principle of proportionality 2

Proposal for a Directive
Article 1a(new)

Text proposed by the European Commission	*Suggestion for wording (EACB)*
	The competent authorities shall ensure when establishing and applying the requirements under this Directive and when using the different tools at their disposal to take account of size, interconnectedness, internal organization, legal status, membership to an IPS or other cooperative internal mutual guarantee systems as according to Art. 80(8) CRD and Art. 3 CRD, and the nature, the scope and the complexity of the activities of institutions.

Bail-In

*a) **Objective***

We support the bail-in as a tool as a statutory power for identifying and imposing losses on shareholders and creditors and use it as a last resort resolution tool to accompany the orderly wind-down of a failing institution as stated in Article 37(2) point b

Concerning the bail-in tool, we are opposed to Article 37(2)(a) in which it is proposed to use bail-in tool for the recapitalization of a failing institution and restoring its ability to carry on its activities. The bail in tool shall not be applied to a bank that has gone concern so that it is put back on its feet. Any credit institution which meets the conditions for resolution shall be taken out of the market and shall not be able to continue as a (revived) competitor.

Suggestion for wording

Proposal for a Directive
Article 37 paragraph 2

Text proposed by the European Commission	*Suggestion for wording (EACB)*
Member States shall ensure that resolution authorities may apply the bail-in tool for either of the following purposes: (a) to recapitalise an institution that meets the conditions for resolution to the extent sufficient to restore its ability to comply with the conditions for authorisation and to carry on the activities for which is authorised under Directive 2006/48/EC or Directive 2004/39/EC;	***Deleted***

b) Difficulties for co-operative banks to apply the bail-in tool

We have concerns that the proposed bail in tool could have serious consequences for cooperative banks. The bail-in tool is not adequate for co-operative institutions for legal and statutory reasons.

There is an urgent need to take certain particularities of co-operative banks on board especially with regard to the conversion of subordinated debt into equity and the scope of eligible debt. While we consider that the bail-in tool should be available, on a proportionate basis, to all types of banking institutions, as currently envisaged, the bail in mechanism is conflicting with the specific governance and ownership structure of co-operative banks .

Instead of the conversion into equity tool, co-operative banks should have the possibility to limit or exclude voting-rights of converted shares and be given a call option in order to exclude non-users/investors from holding capital when the situation allows and the bank has recovered and shares are at nominal value. Without such possibilities the debt equity conversion would be far more intrusive for cooperative banks than for any other bank.

Due to the importance of cooperative banks in Europe, a specific solution must be found by the authorities.

Suggestion for wording

Proposal for a Directive
Recital 44a

Text proposed by the European Commission	*Suggestion for wording (EACB)*
....	***Member States shall consider that the bail-in tool is not adequate for all legal forms of institutions to the same degree. This should be under consideration when applying the bail-in tool.***

c) Eligible Bail-inable liabilities

- *Guaranteed deposits*

As regards AM 92 of Mr Hökmark it is not clear what are the reasons of Mr. Hökmark to apply the bail-in tool on covered deposits if the DGS as such is in any way liable up to the amount of covered deposits (see Art 99 paragraph 1). It should be emphasised that the bail-in tool should never be applied to the single depositor.

The EACB is therefore, not in favour of excluding guaranteed deposits from the scope of the bail in tool as proposed by Amendments 92. We would suggest to maintain the Commission's text of Article 38(1)(2a)

- *Covered bonds*

Some members appreciate that the Rapporteur excludes covered bonds from the bail in tool. This would ensure that covered bonds are not only exempted from bail-in but also avoid uncertainty about the protection of covered bonds investors e.g. under different resolution tools in the directive.

It needs to be ensured that secured debt providing for "structured security" as is the case for covered bonds are considered fully secured and as such excluded from bail in. The definition of secured liability in article 2(58) should, therefore, be amended accordingly.

Furthermore, where covered bonds are treated as "secured liability", point (b) of Art. 38(2), bail-in is only possible to the extent that the market value of collateral does not sufficiently cover the secured liabilities, i.e. in case of under-collateralisation (art.38(2), subpara.2). The issue of voluntary over-collateralisation is however not addressed. We believe that covered bonds for which voluntary over-collateralisation has been pledged should be fully exempted from the scope of bail-in. Subparagraph 2 of article 38(2) should be amended accordingly. Finally, Article 62(1) refers to "secured creditors" which in our understanding does not include UCITS 52(4) compliant covered bonds. This should be amended so that in case national law provides for the full exemption from bail-in of these covered bonds in application of subparagraph 2 of article 38(2), article 62(1) also applies to UCITS 52(4) compliant covered bonds holders.

Therefore, we propose the following amendment:

Suggestion for wording

Proposal for a Directive
Article 9

Text proposed by the European Commission	*Suggestion for wording (EACB)*
The use of resolution tools and powers provided for in this Directive may disrupt the rights of shareholders and creditors. In particular, the power of the authorities to transfer the shares or all or part of the assets of an institution to a private purchaser without the consent of shareholders affects the property rights of shareholders. In addition, the power to decide which liabilities to transfer out of a failing credit institution based upon the objectives of ensuring the continuity of services and avoid adverse effect on financial stability may affect the equal treatment of creditors	The use of resolution tools and powers provided for in this Directive may disrupt the rights of shareholders and creditors. In particular, the power of the authorities to transfer the shares or all or part of the assets of an institution to a private purchaser without the consent of shareholders affects the property rights of shareholders. In addition, the power to decide which liabilities to transfer out of a failing credit institution based upon the objectives of ensuring the continuity of services and avoid adverse effect on financial stability may affect the equal treatment of creditors ***However member states shall ensure that covered bonds as defined in Article 22(4) of Council Directive 86/611/EEC and bonds conferring secured rights to the bond investors are appropriately protected when the resolution tools are applied***

d) Hierarchy of Claims

Importantly, the waterfall of bail-in must respect creditors' hierarchy in insolvency. The proposal rightly provides for that in article 43. However, in article 29(1)(e), the Commission provides that : "except where otherwise provided in this Directive, creditors of the same class are treated in an equitable manner". Not only could this lead to uncertainty but it may carry unintended consequences for creditors.

We oppose this provision. Point (e) should therefore be amended as follows:

Suggestion for wording

Proposal for a Directive
Article 29 (1)(e)

Text proposed by the European Commission	*Suggestion for wording (EACB)*
except where otherwise provided in this Directive, creditors of the same class are treated in an equitable manner	~~***except where otherwise provided in this Directive,***~~ creditors of the same class are treated in an equitable manner

e) Minimum amount of Bail-inable liabilities

The EACB welcome the suggestion in the Draft Report amendment 96 that the amount of the bail-inable liabilities should be a percentage of the total risk exposure amount. It is very important that the business model and risk profile of the institution is properly reflected in the determination of the minimum requirement of eligible liabilities.

Therefore, the EACB strongly supports Amendments 96 of Rapporteur Hökmark.

- *Accountability of covered deposits in the minimum amount of bail-in able liabilities*

In line with Article 99 paragraph 1 which states, that DGS are liable up to the amount of covered deposits, for consistency reasons this fact should also be considered when determining the aggregate amount of bail-in able liabilities. Therefore, covered deposits should be accountable as bail-in able liabilities.

Furthermore, the membership in a risk mitigating solidarity system shall be considered as the existence of such a system prevents the probability of a resolution event.

Suggestion for wording

Proposal for a Directive
Article 38 (3)

Text proposed by European Commission	*Suggestion for wording*
3. The minimum aggregate amount pursuant to paragraph 1 shall be determined on the basis of the following criteria:	3. The minimum aggregate amount pursuant to paragraph 1 shall be determined on the basis of the following criteria:
(a) the need to ensure that the institution can be resolved by the application of the resolution tools including, where appropriate, the bail in tool, in a way that meets the resolution objectives;	(a) the need to ensure that the institution can be resolved by the application of the resolution tools including, where appropriate, the bail in tool, in a way that meets the resolution objectives;
(b) the need to ensure, in appropriate cases, that the institution has sufficient eligible liabilities to ensure that, if the bail in tool were to be applied the Common Equity Tier 1 ratio of the institution could be restored to a level necessary to sustain sufficient market confidence in the institution and enable it to continue to comply with the conditions for authorisation and to carry on the activities for which is authorised under Directive 2006/48/EC or Directive 2006/49/EC;	(b) the need to ensure, in appropriate cases, that the institution has sufficient eligible liabilities to ensure that, if the bail in tool were to be applied the Common Equity Tier 1 ratio of the institution could be restored to a level necessary to sustain sufficient market confidence in the institution and enable it to continue to comply with the conditions for authorisation and to carry on the activities for which is authorised under Directive 2006/48/EC or Directive 2006/49/EC;
(c) the size, the business model and the risk profile	(c) the size, the business model and the risk profile

of the institution;	of the institution;
(d) ***the extent to which the Deposit Guarantee Scheme could contribute to the financing of resolution in accordance with Article 99****;*	*(d)* ~~***the extent to which the Deposit Guarantee Scheme could contribute to the financing of resolution in accordance with Article 99***~~ ***the amount of covered deposits of an institution that are guaranteed in accordance with Directive 94/19/EC****;*
	(da) the membership in a risk mitigating cooperative solidarity system, which ensures the prevention of resolution events by reporting requirements and early interventions in the sense of the DGS Directive
(e) the extent to which the failure of the institution would have an adverse effect on financial stability, including, due to its interconnectedness with other institutions or with the rest of the financial system through contagion to other institutions.	(**e**) the extent to which the failure of the institution would have an adverse effect on financial stability, including, due to its interconnectedness with other institutions or with the rest of the financial system through contagion to other institutions.

f) Coherence with CRD IV regarding Write down

We consider that there may be a conflict between the current proposed Art. 51-55 and the CRD IV regarding the treatment of write down requirements for i.a Additional Tier 1. It is necessary to have consistency between the legal acts in order to avoid legal uncertainty.

The loss-absorbing feature of own funds instruments is a requirement of the Basel III/CRD IV –CRR prudential framework to ensure that a bank's regulatory capital fully absorbs losses at the point the bank becomes non-viable. The CRD IV-CRR will enter into force in the European Union possibly in 2013/2014, while BRRD provides for application of the capital instruments write down provisions as of 1st January 2015, so there is a potential mismatch with CRD4 application.

Suggestion for wording

Proposal for a Directive
Article 52

Text proposed by the European Commission	*Suggestion for wording (EACB)*
1. When complying with the requirement set out in Article 51, resolution authorities shall exercise the write down power in a way that produces the following results: (a) Common Equity Tier 1 instruments are written down first in proportion to the losses and up to their capacity; (b) the principal amount of relevant capital instruments is reduced to zero; the reduction to zero of that principal amount is permanent.	1. When complying with the requirement set out in Article 51, resolution authorities shall exercise the write down power in a way that produces the following results: (a) Common Equity Tier 1 instruments are written down first in proportion to the losses and up to their capacity; (b) the principal amount of relevant capital instruments is reduced to zero; the reduction to zero of that principal amount is permanent. ***However a temporary write down should be possible for institutions not able to convert to equity if the institution is recapitalized according to art. 37(2)(a).***

Government Financial Stabilisation Tools

*a) **New resolution tools***

The introduction of 'government. financial stabilization tools' could results into more direct financial involvement of the State. This is not in line with the purposes of the presented Directive to break the link between sovereigns and the banks. Moreover, we do not see that it would be in the interest of the tax payer. We consider this line of thinking is not realistic.

If it considered necessary to regulate a possible government intervention as a last resort tool, we consider that the guarantee tool could be acceptable given that this is already available as a last resort tool in certain Member States. With regard to the temporary ownership tool, we think this is more or less similar as the bridge bank tool and is not really necessary as additional separate tool. Finally, we would not favour the equity tool. Such governments intervention measures, could be regulated only to the extent required and in so far it is necessary to acknowledge existing national resolution tools.

Funding

a) ***Target level***

We are against the proposal to introduce contributions for resolution which will be used for paying public debt. This would change into an insurance scheme with unlimited coverage. We regard this as out of scope from the perspective of tax payers as well as Governments. Therefore, we would propose for a specified separated resolution fund from public debt with a clear target level and build-up period.

The draft report of Mr. Hökmark states that "contribution from each institution shall be pro-rata to the total amount of its liabilities, excluding own funds, with respect to the total liabilities, excluding own funds, of all the institutions authorized in the territory of the Member State". This is in our view not a good basis to calculate a fair insurance premium. An insurance premium needs to be founded on the probability that a bank will fail to honour its debt and the damage that such a failure will inflict to other (the systemic impact of the bank failure).While at the moment some techniques to calculate the probability of a bank not meeting its obligations on debts are available (for example those used in the pricing of credit default swaps or in the rating industry) and used in the funding market for banks, it shall be pointed out that many local and small banks are not covered neither need or want to be covered by rating agencies. if a fair insurance premium is to be paid to the State s, than the State bears (even if as a last resort) the consequences of banks failure, instead of severing the current mutual reinforcing of banks debts and sovereign debts, it will ultimately reinforce it.

Therefore, we are still in favour of the Commission's proposed Art. 93 and 94 to have a clearly defined target level to be build up in a specified time limit.

We agree with the calculation basis in Art 94: the total amount of liabilities minus deposits and own funds. Nevertheless, the proportion of derivatives on the balance sheet should be more emphasized while calculating the contributions. This basis would ensure that more risk oriented business models would have to contribute more than banks with prudent business models. Article 94 treats a DGS as financing arrangement and a resolution fund differently: A DGS may subtract deposits from the basis parameter, whereas a resolution fund may not. Obviously this should be an incentive to merge DGS and resolution fund, but there is no justification for that incentive. This different treatment has to be abolished, as the Member States should be free to decide to merge DGS and resolution fund or not.

Therefore Art 94 par 2 (b) would have to be deleted.

Article 94 para 2

Text proposed by European Commission	*Suggestion for wording*
1. In order to reach the target level specified in Article 93, Member States shall ensure that contributions are raised at least annually from the institutions authorised in their territory. 2. Contributions shall be calculated in accordance with the following rules: ***(a) if a Member State has availed itself of the option provided for in Article 99(5) of this Directive to use the funds of Deposit Guarantee Scheme for***	1. In order to reach the target level specified in Article 93, Member States shall ensure that contributions are raised at least annually from the institutions authorised in their territory. 2. Contributions shall be calculated in accordance with the following rules: ***(deleted)***

the purposes of Article 92 of this Directive, the contribution from each institution shall be pro-rata to the amount of its liabilities excluding own funds and deposits guaranteed under Directive 94/19/EC with respect to the total liabilities, excluding own funds and deposits guaranteed under Directive 94/19/EC, of all the institutions authorised in the territory of the Member State. ***(b) if a Member State has not availed itself of the option provided for in Article 99(5) to use the funds of the Deposit Guarantee Scheme for the purposes of Article 92, the contribution from each institution shall be pro-rata to the total amount of its liabilities, excluding own funds, with respect to the total liabilities, excluding own funds, of all the institutions authorised in the territory of the Member State.***	the contribution from each institution shall be pro-rata to the amount of its liabilities excluding own funds and deposits guaranteed under Directive 94/19/EC with respect to the total liabilities, excluding own funds and deposits guaranteed under Directive 94/19/EC, of all the institutions authorised in the territory of the Member State. ***b) deleted***

Moreover, national bank taxes in the member states should be accountable for the contributions of the financing agreements as the levies serve the equal aim: to protect tax payers of financing future bank resolution events.

Article 94 para 2 (d) (new)

Text proposed by European Commission	*Suggestion for wording*
	National levies in the Member States which aim at mitigating the costs of banking resolutions for the public are chargeable to the contributions of this directive.

b) Use of DGS fund

The EACB favours the options provided by the Commission to Member States to choose either a DGS or to set up a new system as financing arrangement. However there should be the same general framework for these two options.

The relevant provisions of DGS Directive are quite unclear. The proposal does not guarantee that DGS can be used for early intervention and pay out and that DGS has existing claim to damages against the failing institution after they have paid out money from the DGS fund. Therefore, we consider it necessary that DGS Directive is finalised first before going in further detail.

Nevertheless, the administration of IPS and all cooperative solidarity schemes should be left in the controlled environment of the Banks. The private autonomy of IPS and other cooperative solidarity schemes should be recognised.

c) ***Recognition of IPS and cooperative solidarity system***

It is essential that IPS are considered expressively and formally in the Directive as the first and most useful prevention instrument and also regarding the amount of contributions (risk mitigating function).

Where an IPS is recognized as a DGS, it should optionally be considered as financing arrangements according to the purpose of CMD/BRRD.

Suggestion for wording

Proposal for a Directive
Article 91 paragraph 1
Article 91paragraph 1

Text proposed by the European Commission	*Suggestion for wording (EACB)*
Member States shall establish financing arrangements for the purpose of ensuring the effective application by the resolution authority of the resolution tools and powers.	Member States shall establish financing arrangements for the purpose of ensuring the effective application by the resolution authority of the resolution tools and powers. ***Institutional Proctection Schemes provided that they meet the requirements laid down in art. 80(8) of Directive 48/2006/CE and other cooperative solidarity systems as according to Article 3 of Directive 48/2006/CE shall be considered as financing arrangements,.***
The financing arrangements shall be used only in accordance with the resolution objectives and the principles set out in Articles 26 and 29.	The financing arrangements shall be used only in accordance with the resolution objectives and the principles set out in Articles 26 and 29

Suggestion for wording

Proposal for a Directive
Article 94 paragraph 7

Text proposed by European Commission	*Suggestion for wording*
7. The Commission shall be empowered to adopt delegated acts in accordance with Article 103 in order specify the notion of adjusting contributions in proportion to the risk profile of institutions as referred to in paragraph 2 (c) of this Article, taking into account the following: (a) the risk exposure of the institution, including the importance of its trading activities, its off-balance sheet exposures and its degree of leverage;	7. The Commission shall be empowered to adopt delegated acts in accordance with Article 103 in order specify the notion of adjusting contributions in proportion to the risk profile of institutions as referred to in paragraph 2 (c) of this Article, taking into account the following: (a) the risk exposure of the institution, including the importance of its trading activities, its off-balance sheet exposures and its degree of leverage; ***(aa) the existence of a risk mitigating cooperative solidarity system, which ensures the prevention of resolution events by reporting requirements and early interventions in the sense of the DGS***

(b) the stability and variety of the company's sources of funding; (c) the financial condition of the institution; (d) the probability that the institution enters into resolution; (e) the extent to which the institution has previously benefited from State support; ***(f) the complexity of the structure of the institution and the resolvability of the institution, and*** (g) its systemic importance for the market in question.	***Directive;*** (b) the stability and variety of the company's sources of funding; (c) the financial condition of the institution; (d) the probability that the institution enters into resolution; (e) the extent to which the institution has previously benefited from State support; ***(f) deleted*** (g) its systemic importance for the market in question.

d) Mutual Borrowing

We consider that there should not be any borrowing and lending of money by one financing arrangement to another. Even the suggestion by the Rapporteur to make it voluntary cannot find our support. As this would be the stepping stone and could lead to an EU resolution fund which is not realistic or desirable.

There is no influence on the risk profile of institutions in other member states or of the funds itself. We consider that burden sharing nor borrowing between funds should not be mandatory nor voluntary especially considering the different forms and levels of DGS and existing resolutions schemes in the EU.

Therefore Art 97 should be deleted.

Suggestion for wording

Proposal for a Directive
Article 97

Text proposed by the European Commission	*Suggestion for wording (EACB)*
Member States shall ensure that financing arrangements under their jurisdiction shall have the right to borrow from all other financing arrangements within the Union, in the event that the amounts raised under Article 94 are not sufficient to cover the losses, costs or other expense incurred by the use of the financing arrangements, and the extraordinary contributions foreseen in Article 95 are not immediately accessible. (etc)	***Deleted***

Suggestion for wording

Proposal for a Directive
Article 98

Text proposed by the European Commission	*Suggestion for wording (EACB)*
Member States shall ensure that, in the case of a group resolution as established in Article 83, each national financial arrangement of each of the institutions that are part of a group contributes to the financing of the group resolution in accordance with this Article. ***etc***	***Deleted***