

European Commission  
Directorate General Internal Market and Services  
B-1049 Brussels  
Belgium

Sent to: [markt-crisis-management@ec.europa.eu](mailto:markt-crisis-management@ec.europa.eu)

Copenhagen, 3 March 2011

### **Technical details of a possible EU Framework for Bank Recovery and Resolution**

Danish Shareholders Association is the organisation representing private investors in Denmark.

Danish Shareholders Association finds the proposal on bank recovery and resolution unacceptable. The proposal is unacceptable for several reasons:

- Legal problems
- Corporate governance principles
- Supervisory problems
- Citizen's confidence.

The crux of the problem is that governments want to protect themselves against being forced to bail out banks in difficulties.

The proposal will undermine the shareholders rights and introduce tools that can change a bank totally without having to ask the shareholders.

It would be better for society if governments developed a new and more responsible corporate governance system and made the financial supervisors more active and more powerful at the start of economic problems

#### **Legal problems**

The proposal is apparently conflicting with the European Human Rights Convention and with some of the national constitutions. We know that it is in conflict with the Danish constitution.

The problem is that shareholders economic ownership and right to participate in the decisions about the company on the General Assembly are overruled by the procedures proposed.

It is also a legal problem that the proposal requires changes in EU company law directives because the aims for the proposal on bank recovery and resolution are considered of more value than the aims for the company law directives.

This opens up for a dilution of shareholders rights that easily can be transferred to other industries than banking and investment.

### **Corporate governance principles**

The proposal is negative in relation to the development of better corporate governance.

It is for minority shareholders extremely difficult to exercise influence on the politics and activities of a company. It is the elected and/or the employed members of the board who govern the company.

The crucial challenge is to develop corporate governance systems that give the shareholders better tools to influence the politics of their company.

If supervisors and/or other authorities in charge of resolution are given special powers to take over and make the important decisions about a company in difficulties is the role of the elected and employed officers of the company diluted and it is possible that these officers will feel less obliged to find the right solutions at an earlier stage.

### **Supervisory problems**

The main task of the supervisors is to oversee that banks and investment firms are run in accordance with the legislation.

Supervisors have a special obligation to make sure that the rules on transparency are followed. Minority investors who cannot get a direct dialogue with the management of the companies make their decisions based on the information issued by the listed companies.

Minority shareholders expect the supervisors to

- know and follow companies
- inform companies about problems observed by the supervisor in order to avoid problems
- help guiding companies out of troubles in an early phase of the problems
- force companies to react on problems if the company officers are reluctant
- make sure that all relevant information is available in the market
- If necessary force companies to inform the market in an open and trustworthy way about the situation of the company

If supervisors have a major role in bank recovery and resolution is it possible that minority shareholders will think that tough decisions without having to involve the shareholders is an action to cover up that the supervisor did not do his job as he should had done at an earlier stage of the crisis development.

### **Citizen's confidence**

The idea behind all legislation concerning securities, markets for financial products etc. is that society expects citizens (consumers) to invest some of their savings in shares. That is why we have made the MiFID that is a guiding principle behind a long list of European and national legislative acts.

It has been a major principle that the markets and the value of the issuing company should be transparent.

Banks have been regarded as safe investments because they are under permanent supervision.

But who wants to be a minority shareholder in a company that can be split up behind your back. Major shareholders will often be better off because they will know more about the company and they might even be taken in as part in the reconstruction.

Minority shareholders are afraid that the principles for bank recovery and resolution could be developed to be used also in relation other important listed companies like energy.

Consumers feel that now is the time of the carnivores.

Governments want to protect themselves against being forced to bail out a bank in difficulties.

It would be better for society if governments tried to improve corporate governance and support the development of responsible shareholders and especially of responsible elected and employed managers of the financial institutions.

The financial supervisors shall also be developed so that they are able to act at an earlier stage and perhaps with more force than today. It is far cheaper for society to save a bank at an early stage of economic problems than it is to come in, when it is necessary to cut the bank in small pieces.

Kind regards



Charlotte Lindholm  
CEO

Dansk Aktionærforening  
Danish Shareholders Association  
E-mail: [charlotte@shareholders.dk](mailto:charlotte@shareholders.dk)