

Minutes of the Banking Liaison Panel 20 October 2011

Attendees and apologies

1. Stephen Evans (Treasury) chaired the meeting. Others attending were Michael McKersie (Association of British Insurers), Roger Brown and Rob Beattie (British Bankers' Association), Dorothy Livingston (City of London Law Society), Bernina Butt and Roland Susman (Financial Markets Law Committee – Observers), Ed Murray (International Swaps and Derivatives Association), Guy Sears (Investment Management Association), Lucy Chennells (Bank of England), Tom Crossland (Financial Services Authority), Paul Mayo (Insolvency Service) and Heather Kempton (Treasury).
2. Apologies were received from Richard Heis (Association of Recovery Professionals), Jeremy Palmer and Adrian Coles (Building Societies Association), Joanna Perkins (Financial Markets Law Committee), Peter Brierley and Geoffrey Davies (Bank of England), and Alex Kuczynski and James Darbyshire (Financial Services Compensation Scheme).

Minutes from the previous meeting

3. The minutes of the meeting on 21 July 2011 were approved. The Treasury noted that the timetable for publication by the European Commission of their legislative proposals had slipped since July, and that it was now expected by the end of the year. Consultation with stakeholders, as far as possible, would then follow. In the meantime, Panel members were welcome to submit any views to the Treasury.

Independent Commission on Banking

4. The Treasury sought the Panel's views on the recommendations of the Independent Commission on Banking (ICB), and in particular on the cost-benefit analysis contained in the report, ahead of the Chancellor's formal response later this year. Points raised in the discussion included:
 - The cost-benefit analysis in the report seemed more thorough on the ring-fencing proposals than for the depositor preference and bail-in proposals. The ICB seemed to assume that shifting risk from one set of companies to another was costless overall, while this was not necessarily the case. Additional uncertainty for creditors would create significant costs and volatility. The extra costs of longer-term borrowing needed to be taken into account;
 - There was a need to consider fully the impact on alternative sources of funding for small and medium-sized enterprises. Not all businesses could borrow abroad as the report seemed to suggest. While it could be argued that credit was too cheap and widely available prior to the crisis, the proposals could lead to a higher risk of pro-cyclical premia on lending;
 - The proposals were likely to reduce competition in the market as firms sought to merge to increase efficiency and reduce costs. There may be a trade-off between stability and competition.
5. The Treasury invited the Panel to submit any further comments in writing.

Amendments to the Special Resolution Regime

6. The Treasury described the consequential amendments to the Special Resolution Regime (SRR) and the bank insolvency procedure established by the Banking Act 2009 arising from the establishment of the Prudential Regulation Authority (PRA) and the Financial Conduct Authority (FCA). Under the general proposals (which had been subject to public consultation and were now undergoing pre-legislative scrutiny), the PRA would have the authority to trigger the SRR, while the Bank of England would continue to be the lead resolution authority under the SRR. The PRA was to be a subsidiary of the Bank of England but would be operationally independent.
7. As now, the decision to trigger entry into the SRR would be a regulatory decision that a bank was failing (or likely to fail) to meet its threshold conditions, and that, having regard to timing and other relevant circumstances, it was not reasonably likely that (ignoring the stabilisation powers) action would be taken by or in respect of the bank to enable it to restore compliance. The PRA (rather than the Bank) would be legally responsible and accountable for making this determination. The Government expected that the CEO of the PRA would be called to appear before Treasury Select Committee, as the CEO of the Financial Services Authority (FSA) may be required to account to the Committee for its determination. In addition, the draft proposals included requirements for consultation with the FCA, and the PRA could trigger the SRR on the basis of a notification from the FCA that a firm was failing (or likely to fail) its threshold conditions, if it thought it appropriate.
8. The Panel noted that this was a potentially significant change, and that the model of the PRA as a subsidiary of the Bank of England was untested. However, it was recognised that the PRA should have the appropriate knowledge to make any decision to trigger the SRR, on the same basis as the FSA currently had.
9. The Panel concluded that they would welcome the opportunity to comment on any proposed changes to secondary legislation made under the Act in the new year.

Financial Stability Board: Proposed Resolution Framework

10. The Bank of England outlined the timetable for the Financial Stability Board's (FSB's) proposals on the key attributes of resolution regimes. Following consultation over the summer, the FSB had revised their paper and would be submitting the final version for consideration by G20 leaders at their summit on 3-4 November.
11. Issues raised in the following discussion by the Panel included:
 - Some of the proposals in the FSB's consultation document went beyond those proposed by the European Commission in their public consultation, and it would be important to assess the costs and benefits of these measures;
 - What the status was of the annexes to the consultation document on creditor hierarchy and on the arrangements for stays, with the Panel noting that any material changes to the proposed maximum length of any stay being likely to cause difficulties in practice;
 - Whether any agreement on the Key Attributes would constitute a commitment by the G20 to legislate for those powers or would operate more as a statement of best practice would depend on the nature of the language used in the Summit's conclusions.

Any other business

12. The Panel agreed that at future meetings they should revisit the small companies carve-out and proposals for bail-in and depositor preference (last discussed in July), the latter subject to the ongoing work on the ICB recommendations, and consider the interactions between the powers under the SRR (and the EU's proposals on the crisis management framework when published) and the operation of market infrastructure and the requirements of other European measures such as the measure known as the European Market Infrastructure Regulation (EMIR).

HM Treasury