

**Sweden: Financial Sector Assessment Program Update—Technical Note on
Contingency Planning, Crisis Management and Bank Resolution**

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SWEDEN

CONTINGENCY PLANNING, CRISIS MANAGEMENT
AND BANK RESOLUTION

TECHNICAL NOTE

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GLOSSARY

BCBS	Basel Committee on Banking Supervision
CIB	Carnegie Investment Bank AB
CRD	Capital Requirements Directive
DGF	Deposit Guarantee Fund
DGS	Deposit Guarantee Scheme
DSG	Domestic Standing Group
ECB	European Central Bank
EEA	European Economic Area
ELA	Emergency Liquidity Assistance
EU	The European Union
FI	Finansinspektionen (Swedish Financial Sector Supervisory Agency)
IADI	International Association of Deposit Insurers
MOF	Ministry of Finance
MOUs	Memoranda of Understanding
MOU	Memorandum of Understanding
P&A	Purchase and Assumption Transaction
RB	Sveriges Riksbank, the Swedish Central Bank
SIFI	Systemically Important Financial Institutions
SNDO	Swedish National Debt Office

EXECUTIVE SUMMARY

This note elaborates on the recommendations made in the Financial Sector Assessment Program (FSAP) Update for Sweden in the areas of contingency planning, crisis management and bank resolution. It summarizes the findings of the FSAP Update mission undertaken during March 9–22, 2011 and is based upon analysis of the relevant legal and policy documents and intensive discussions with the authorities and private sector representatives. Where appropriate, the new government proposals for reforms elaborated in the aftermath of the crisis are taken into account.

Sweden’s safety net and crisis management arrangements fared well during the global financial crisis. The authorities’ response to financial crisis was well-coordinated and forceful, with a wide range of extraordinary measures that helped to contain the impact of crisis and restore market stability and confidence. The crisis also revealed some weaknesses in the framework for dealing with failing deposit taking institutions. Some weaknesses were overcome by passing the new crisis legislation in 2008, but the range of options for dealing with non-systemic institutions remains insufficient.

The key findings and recommendations of this note are as follows:

- ***Domestic institutional framework for contingency planning and crisis management***—The institutional setup for contingency planning is broadly appropriate in Sweden, including an active ongoing information exchange and dialogue via the Domestic Standing Group (DSG) chaired by the state secretary of the Ministry of Finance (MOF), as well as bilateral contacts of the key agencies. Going forward, authorities are encouraged to complement crisis management arrangements by developing the macroprudential policy framework, clarifying the Riksbank’s (RB’s) mandate in the area of financial stability and setting up a high-level systemic council with an explicit mandate and accountability. Furthermore, coordination between relevant agencies would benefit from improving routines for information and data sharing and testing them in a domestic crisis simulation exercise involving all parties to the domestic Memorandum of Understanding (MOU).
- ***Cross-border cooperation***—Strong foundations for effective cross-border cooperation have been laid down in the bilateral and multilateral Memoranda of Understanding and years of experience on functioning of the supervisory colleges in the Nordic-Baltic region. Authorities are encouraged to elaborate the burden-sharing principles of the 2010 Nordic-Baltic MOU into a more structured assessment framework, develop confidential platform for data exchange and test the framework through a joint crisis simulation exercise.
- ***Emergency liquidity assistance (ELA)***—RB’s mandate for ELA to an individual institution is robust for dealing with domestic liquidity problems and provides RB

with a high degree of flexibility to react to an evolving crisis. Its ELA policy has been publicly communicated and tested in the recent crisis. Further work might be needed on modalities for addressing cross-border liquidity problems and on the interplay between the RB's ELA and support by the Swedish National Debt Office (SNDO) in different stages of financial crisis management.

- ***State support to financial institutions***—Framework for official financial support to systemically important financial institutions (SIFIs) and for temporary public ownership is a pragmatic approach for handling systemic crisis. Approaches that would enable resolution authorities to write down the claims of some or all of the unsecured creditors and to convert debt into equity could usefully complement this framework once design modalities are agreed at the international level.
- ***Deposit guarantee scheme (DGS) and bank resolution***—A robust and flexible early-intervention framework that would provide the supervisory and resolution authorities with the tools and mandate to intervene and resolve ailing institution at an earlier stage is needed. Introducing a resolution regime for credit institutions and legislative changes to DGS in a single legislative package is preferable in order to ensure legal consistency. In the meanwhile, authorities are encouraged to carry out reforms of the DGS with an aim to shorten the payout, redefine a DGS trigger and improve information available to the Deposit Guarantee Fund (DGF) administrator proposed recently by the government.

Policy recommendations are summarized in Table 1.

Table 1. Detailed Policy Recommendations

Recommendations	Timeframe
<i>Domestic coordination arrangements and systemic oversight</i>	
Refine the regular exchange of information between the FI and RB and develop appropriate routines	Short-term
Introduce a legal requirement for FI to inform SNDO as the manager of DGF about circumstances that could eventually trigger a DGS payout sufficiently in advance	Short-term
Test the functionality of the 2009 domestic MOU in a crisis simulation exercise involving all its parties	Medium-term
<i>Cross-border coordination arrangements</i>	
Develop burden-sharing assessment framework and confidential data warehouse implied by the 2010 Nordic-Baltic MOU (in cooperation with other national authorities)	Medium-term
Test the new tools in a cross-border crisis simulation	Medium-term
Strengthen FI's staff and resources for running supervisory colleges it chairs	Short term
Enhance the common platform for information exchange among supervisory authorities implied by the bank-specific MOUs	Medium-term
<i>Emergency liquidity assistance</i>	
Formalize RB and FI cooperation in assessing solvency and viability in the context of ELA	Short-term
Clarify the RB's scope for granting ELA relative to SNDO's powers under the terms of the Government Support Act in different stages of the crisis	Medium-term
<i>Bank resolution</i>	
Give FI the right to petition for insolvency of credit institutions	Medium-term
Give FI powers to initiate special bank resolution on an administrative basis with a pre-insolvency regulatory threshold, including enabling P&A	Medium-term
Specify the role and powers of the liquidator	Medium-term
Authorize the DGF to support bank resolution operations	Medium-term
Establish a clear priority of claims in the insolvency regime for credit institutions	Medium-term
Consider giving (insured) depositors a preference in creditor ranking	Medium-term
Remove a possibility that a court appeal stays supervisory action (license revocation). The shareholders should be entitled to monetary damages, rather than a reversal of a supervisory decision	Medium-term
<i>Deposit insurance</i>	
Change in the DGS trigger to make DGS funds available upon the revocation of the license by FI	Short-term
Shorten the maximum legal period for payout and remove the option to prolong this period	Short-term
Explore technical ways to accelerate the payout to below the statutory limits	Short-term
Require banks to keep an up-to-date database of depositors' identification data and deposit balances on a "single customer" basis	Medium-term

I. Introduction¹

1. **This report reviews the contingency planning and crisis management framework in Sweden and puts forth policy recommendations.**² The contingency framework is viewed as contributing to preparedness in the face of systemic financial stress. The first line of defense in case of a financial crisis rests with sound and prudent management by the private financial institutions themselves. Crisis prevention policies in the areas of regulation, supervision and financial stability monitoring make up the second line of defense. If these efforts fail, public authorities may wish to intervene—the third line of defense—to mitigate the risk of economy-wide effects. Any such intervention has to weigh carefully the need to preserve stability of the financial system against an often inevitable risk of moral hazard. In a nutshell, the contingency framework should serve two purposes: (i) to act as an incentive to the private sector to find solutions well in advance because the public sector is not going to provide a bail out to shareholders or preserve managers' jobs and (ii) to act as a reassurance to depositors and other creditors (and indeed to borrowers) that authorities are capable of addressing bank failures without a widespread systemic disruption.

2. **Much has been learned from cross-country experience with contingency planning.** The legal framework should define clearly the responsibilities and accountability of the different government entities. The institutional framework for cooperation between the authorities, both domestically and internationally, should be specified to the extent possible. Ex ante planning is crucial with respect to the legal, institutional, and operational levels of the contingency framework. Finally, ongoing review, testing and revision are needed to help ensure that the framework is practical. At the same time, there is no universal blueprint and such a framework has to reflect the specific legal and institutional tradition in each country, as well as the nature of its potential systemic vulnerabilities.

3. **Sweden's safety net and crisis management arrangements fared well during of the global financial crisis.** The Swedish authorities' response to financial crisis was timely and forceful with a wide range of extraordinary measures that helped to contain the impact of crisis and restore market stability and confidence. Crisis response required also a close coordination with the host authorities of major Swedish banks and entailed difficult decisions on the degree of Swedish involvement in addressing cross-border issues in the neighboring countries. The crisis revealed some weaknesses in crisis preparedness. While bank failures were handled in a relatively efficient manner, limitations emerged in the

¹ This Technical Note was prepared by Michaela Erbenova (MCM).

² The note elaborates findings of the FSAP Update mission undertaken during March 9–22, 2011 and is based upon analysis of the relevant legal and policy documents and intensive discussions with the authorities and private sector representatives. The documents and legal norms that the mission reviewed were mostly English translations from Swedish provided by the authorities. The views expressed in the report with respect to the provisions of the laws, regulations, and practices may thus be subject to errors in translation.

toolkit for dealing with failing credit institutions.³ Some weaknesses were overcome by passing the new crisis legislation in the early stage of the crisis in 2008, but a range of options for dealing with non-systemic institutions remains insufficient.

4. **Swedish authorities are reviewing the framework for managing financial crises to incorporate crisis lessons.** A Committee for review of the crisis management framework has been set up to analyze the lessons learned from the crisis and propose legislative and institutional measures aimed at improving authorities' ability to manage various kinds of financial crises, so that the functioning of the financial system can be maintained and problem institutions resolved effectively and efficiently, while protecting taxpayers' interests and public confidence.⁴ The Committee is tasked to present its report no later than August 2012, taking into account also the work in progress in the EU, the IMF and the G-20. Authorities are also actively involved in the EU-wide review of the crisis management framework as well as in the work of multilateral standard setting bodies. Where appropriate, the new government proposals for reforms elaborated in the aftermath of the crisis are taken into account in this report.

5. **The report is organized as follows.** The next section deals with crisis preparedness and interagency cooperation. The ELA, which is often the first intervention during an episode of systemic stress, is the subject of Section III. The framework for official financial support to SIFIs, bank resolution and DI frameworks are analyzed in Section IV. In Appendix I the Swedish DI system is compared with the best international practice encapsulated in the Core Principles for Effective Deposit Insurance.

II. SYSTEMIC OVERSIGHT, CRISIS PREPAREDNESS, AND COORDINATION

6. **Crisis preparedness and coordination in Sweden involves four government entities and a complex set of explicit and implicit arrangements.**⁵ The Swedish financial

³ In this note, the terms "credit institution" and "bank" are used interchangeably to denote institutions accepting deposits from public that are covered by DI. In Sweden, the substantial majority of all deposits (98 percent) are held by banks. However, other categories of institutions are allowed to take deposits. These primarily include credit market undertakings and—in the context of securities business—securities firms to the extent necessary for facilitating securities trading. Deposits with all these institutions are covered by the Deposit Guarantee Scheme. Both banks and credit market undertakings may carry out "financing business" which corresponds to the activities that "credit institutions" may carry out pursuant to Article 4.1.a) of the EU Credit Institutions Directive (2006/48/EC) and both are also subject to the FI prudential supervision. Deposits (up to SEK 50,000) may be taken by deposit companies under the Deposits Business Act. Such deposits (extremely limited) are not covered by the Deposit Guarantee Scheme.

⁴ The mandate of the committee is elaborated in a decision of the Government meeting on February 3, 2011, see <http://www.sweden.gov.se/sb/d/14393/a/160326>.

⁵ As in other countries, not all contingency planning agreements are in written form. Implicit arrangements include a common understanding among the key policy makers on the interpretation of the legal framework, desirable or feasible policies in different model situations, etc.

sector supervisory agency (Finansinspektionen or FI) deals with authorization of institutions and their prudential supervision, as well as remedial actions in response to problems arising in these institutions. Its objectives are to contribute to a stable and sound financial system and to actively promote consumer protection.⁶ The RB's mission—besides monetary policy—is to promote safe and efficient payments system. It provides ELA and oversees systemically important payments, clearing and settlement systems.⁷ MOF as a fiscal authority bears the ultimate political responsibility for financial stability but is also responsible for legislation in the financial sector. When public funds might be called upon to support failing institutions, decisions by the MOF might be needed. In Sweden, this responsibility is shared between two ministers—the Minister for Finance and the Minister for Financial Markets—who are both Cabinet members. Finally, The SNDO manages DI and investor protection systems and is the support authority when public funds are conferred on a credit institution.

7. A number of players and dispersed nature of their responsibilities requires arrangements formalizing cooperation and information exchange. Ex ante coordination mechanisms and clear understanding of respective mandates are essential for effective and swift actions in crisis. Solid legal underpinnings for the exchange of confidential information and clear accountability mechanisms are equally important ingredients of a sound crisis management framework. Besides the legal basis, institutional and operational aspects of coordination usually involve:

- Standing groups composed of representatives of the central bank, supervisor and MOF/treasury;
- Cross-representation on boards of the central bank and supervisor;
- MOUs dealing with the authorities' powers and information exchange;
- Specific crisis management operational procedures for authorities' cooperation and co-ordination; and
- Drills based on hypothetical scenarios (crisis exercises).

8. The cross-border dimension of contingency planning plays an important role in Sweden given the large cross-border exposures of the banking sector. A financial crisis in Sweden or countries where Swedish banks have significant exposures will be likely to have cross-border consequences. Thus, effective contingency planning necessitates well-

⁶ See Financial Supervisory Authority Instructions Ordinance (2009:93). Translation into English has been provided by authorities.

⁷ See The Sveriges Riksbank Act (1988:1385) as from January 1, 2011, translation into English at <http://www.riksbank.com/templates/Page.aspx?id=28393>.

defined roles, requisite measures and relationships between home and host central banks, ministries and supervisors, in the context of their national legal responsibilities. The elaborate set of bilateral and multilateral domestic and cross-border MOUs is a basis for defining these roles, complemented by the European Supervisory Authorities and the European Systemic Risk Board that create a number of formal and informal communication channels between the relevant agencies of different countries. The ongoing international coordination regarding the problems in cross-border banks takes place first and foremost in supervisory colleges.

A. Domestic Arrangements

9. **The FI has explicit legal responsibility for promoting financial stability, while the RB's role is defined more narrowly.** The FI is the sole agency tasked with an explicit broad financial stability objective. Part of the toolkit, however, falls under the remit of SNDO or RB. The RB does not have an explicit financial stability mandate enshrined in the law, but in many countries, a provision on promoting a safe and efficient payments system is interpreted as a more general responsibility for the stability of the financial system.

10. **The legal framework provides a sound basis for information exchange while key institutional elements are in place for domestic coordination.** Gateway provisions in respective legislation provide for the exchange of information between the principal domestic authorities with responsibilities with respect to financial stability in addition to a high degree of transparency inherent to the Swedish public administration.⁸ The MOU signed in 2009 by the MOF, the RB, FI and the SNDO establishes guidelines for consultation and the exchange of information between the parties in the areas of financial stability and crisis management.⁹ The RB deputy governor is represented on the Board of the FI. The DSG set up for consultation and information sharing is led by the MOF State Secretary with responsibility for financial market matters, and comprises a member of the Executive Board of the RB, the Director General of the FI and the Director General of the SNDO. Similarly to other

⁸ In principle, all information that is collected by or communicated from a public Swedish authority is open for public to see unless an explicit justification has been provided. Further, RB Act requires RB to consult FI on matters of major importance within their mandates. FI Instructions Ordinance imposes an obligation on FI to notify government on risks that instability in the financial sector could adversely affect the functioning of the Swedish financial system, and to cooperate with and notify the RB on issues relating to the crisis management, stability of the payment system or to the RB's responsibility for currency and credit policy and for the payment system overall, and to the SNDO on issues of significance to deposit insurance investor protection. In turn, the SNDO Instructions Ordinance tasks SNDO with the obligation to consult and exchange information with RB, FI, and other competent authorities in matters related to deposit insurance or government support to credit institutions. When Sweden implements the revision to the 2009 EU Capital Requirements Directive (CRD2) gateways for information exchange both between supervisors (domestic and non domestic) and other relevant domestic authorities, particularly in respect of crisis management situations, will be further reinforced.

⁹ The 2009 MOU is an extension of the 2005 MOU between the MOF, RB, and FI after the Government Support to Credit Institutions Act gave new roles to the SNDO in the DGS and as the support agency. Appropriately, the DSG has been widened to include SNDO following the enactment of the Act. See <http://www.riksbank.com/templates/Page.aspx?id=9392>.

countries, this consultative group has no decision making powers and is tasked with assessing financial stability and systemic risks, developing coordination routines, organizing crisis exercises and cross-border communication. The group should meet at least quarterly, but may be convened at short notice any time. A dedicated section of the MOU further elaborates cooperation between FI and RB.

11. A clear mandate and common understanding of crisis resolution and financial stability responsibilities would support the contingency framework and might better outline possible options for financial stability arrangements. Examples from various countries as well as the EU Treaty foundations on financial stability mandates for the central banks are described in Box 1. While primary responsibility for ensuring the stability of the financial system needs to rest with macroprudential policy, other policies can complement it.¹⁰ Both microprudential and monetary policies impact the cost of risk in the financial system and the economy. In turn, macroprudential policy cannot substitute for sound policies more broadly, including in particular strong prudential regulation and supervision, and sound macroeconomic policies. To this end, consideration could be given to specifying RB's financial stability mandate to be broader than in relation to the payments system and augmenting the existing institutional arrangements by establishing an overarching macroprudential framework.

12. Routines currently in effect warrant further enhancement to facilitate prompt information exchange. In addition to DSG and existing MOU requirements, the Swedish authorities cooperate extensively informally. During the financial crisis, this cooperation has been enhanced and the challenge now is to ensure that open and effective communication and information exchange remains in place in the aftermath of the crisis. The 2009 MOU sets only a very high-level set of principles for data exchange between RB and FI and has not been supplemented by standardized routines. This could hinder a more thorough and frequent exchange of information between the RB and FI. For example, the RB would benefit from a more efficient use of supervisory data in the RB's financial stability analysis while FI could supplement its supervisory returns with a higher frequency data compiled by the RB on a more systematic basis. In turn, the legal underpinnings for information exchange between FI and the SNDO need to be strengthened as there is currently no formal requirement for advance communication about an ailing financial institution which could trigger a DGS payout.

¹⁰ See Macroprudential Policy: An Organizing Framework, prepared by staff of MCM and RES Departments, IMF, March 2011 at <http://www.imf.org/external/np/pp/eng/2011/031411.pdf>.

Box 1. Financial Stability and Central Bank Legislation

Apart from monetary policy, maintenance of an efficient, high-quality financial system is a key responsibility for modern central banks. The challenge lies in ensuring that market forces operate to the full while preventing major disruption of the financial system, which would jeopardize all sectors of the economy. Increasingly, this function becomes formalized in the central bank legislation and in the documents of the EU.

In accordance with Article 127(5) of the Treaty on the Functioning of the European Union: "The ESCB should contribute to the smooth conduct of policies pursued by the competent authorities relating to the prudential supervision of credit institutions and the stability of the financial system" (Article 3.33 of the ESCB Statute reflects this task with the same wording).

Accordingly, many central bank laws in the EU countries entrust central banks with a role to preserve financial stability. Apart from the central banks, which are also tasked with banking or financial sector supervision, also the central banks without the role of banking/financial sector supervisor are tasked (or co-tasked) with an explicit objective of preserving financial stability in several EU countries. Examples include:

- Austria: The Federal Act on the Oesterreichische National Bank states that "in the public interest, Oesterreichische Nationalbank shall monitor all circumstances that may have an impact on safeguarding financial stability in Austria."
- Hungary: The Act on the Magyar Nemzeti Bank mandates the MNB to "promote the stability of the financial system."
- Luxembourg: according to the Organic Law of the Banque Centrale du Luxembourg the central bank shall "cooperate with the Government and with prudential supervision authorities at national level, as well as with the other central banks at Community and international level, to contribute to ensuring financial stability, notably within committees set up for this purpose."
- Finland: Act on the Bank of Finland (BoF) gives the BoF task to "participate in maintaining the reliability and efficiency of the payment system and overall financial system and participate in their development."
- Poland: Act on the National Bank of Poland is tasked with inter alia "regulating the liquidity of the banks and providing them with refinancing facilities, establishing the necessary conditions for the development of the banking system, and acting to sustain stability of Poland's financial system."

Similar clauses can be found also in some non-European countries. For instance in Canada, the central bank law charges the central bank with a task to "generally promote the economic and financial welfare of Canada." The Bank of Japan's objective is defined as "to ensure smooth settlement of funds among banks and other financial institutions, thereby contributing to the maintenance of stability of the financial system."

Source: Staff analysis of the national central bank's laws.

13. **Domestic crisis simulation exercises have been held repeatedly but the new arrangements involving the SNDO remain to be tested.** The national authorities organized eight financial crisis management exercises since 2003 which uncovered a number of useful lessons on the need for coordination of information sharing and communication, coordination of decision-making and regarding the interaction of different legislation. These findings were complemented by real life experience from the recent crisis. The new 2009 MOU and new DGS and state support arrangements need to be tested for their functionality.

14. **The authorities are encouraged to implement the following measures to further strengthen the domestic cooperation arrangements:**

- ***Refine the regular exchange of information pertaining to financial stability between FI and RB.*** This encompasses data, supervisory information and analyses of aggregate developments and the financial situation of major banking groups so as to maintain a common understanding of systemic developments. Routines for a more automatic information sharing should be developed while necessary confidentiality arrangements are respected.
- ***Strengthen requirements for the information exchange between FI and the SNDO.*** As envisaged in the government proposal for the DGS amendments (more details in Section IV), the FI should be required to inform SNDO once it becomes aware of circumstances that could trigger a DGS payout to give it sufficient lead time.
- ***Undertake domestic crisis simulation exercise involving all parties of the 2009 MOU.*** A domestic crisis exercise should be held, based on a scenario of medium-sized bank illiquidity, to test the necessary coordination and cooperation procedures between the RB, SNDO, and FI in the event of deciding on a provision of ELA or depositor payout and the effectiveness of all necessary technical means, templates and data for the speedy exchange of meaningful data.

B. Cross-Border Coordination

15. **Important foundations for cross-border cooperation have been laid down in the Nordic-Baltic MOUs and the EU-wide arrangements.** The Swedish authorities are actively involved in international and EU regulatory initiatives and bodies and seek cooperation with neighboring countries' regulatory authorities. Sweden played a leading role in the establishment of the cooperation agreement on cross-border financial stability, crisis

management and resolution among Baltic and Nordic authorities in 2010.¹¹ Swedish authorities are a party to a number of other bilateral and multilateral MOUs.¹²

16. **Information sharing among authorities involved in a cross-border banking group is a delicate concern but Sweden has responded actively to this challenge.** The Swedish FI is one of the earliest jurisdictions to start putting supervisory colleges in place and use them as an active participatory process by the core members. In the Nordic and Baltic countries, there are five banking groups with significant cross-border activities, with FI being the home supervisor for four of them.¹³ The regulatory contacts of the core college groups include nine supervisors while crisis measures could require coordination with eight central banks.¹⁴ Information sharing can be complicated and slow in such a setting unless it is guided by processes enabling a more immediate access to information.

17. **FI chairs supervisory colleges for the four major Swedish banks which are fully operational.** Quarterly meetings are held for the core colleges while extended colleges meet on an annual basis. Bank-specific MOUs on supervisory cooperation have been signed for all four SIFIs. Core college authorities discuss jointly supervisory priorities, carry out joint inspections and debate appropriate follow-up on a regular as well as ad-hoc basis. Recently completed joint supervisory review process and Pillar 2 capital allocation discussion for the four groups has been an important step in developing a shared understanding of the risk profile and activities of these groups as well as robust contingency plans.

18. **Following elements of cross-border framework remain outstanding:**

- ***Developing and testing the toolkit implied by the 2010 Nordic-Baltic MOU*** by agreeing on a more structured burden-sharing assessment framework and templates (foreseen in the 2010 MOU) for a confidential data warehouse. The new Nordic-

¹¹ The cooperation agreement was signed by the ministries of finance, central banks, and financial supervisory authorities of Denmark, Estonia, Finland, Iceland, Latvia, Lithuania, Norway, and Sweden. It creates *inter alia* a Nordic-Baltic stability group, defines its governance arrangements and a comprehensive list of responsibilities as well as a basis for burden sharing among the signatory countries in an event of a cross-border crisis. It builds on the EU-wide MOU on cross-border cooperation signed in 2008. See http://www.riksbank.se/upload/Dokument_riksbank/Kat_AFS/ENGGrisMOU_29042009EB%20_3_.pdf

¹² Not all MOUs are publicly available due to confidentiality. The public MOUs can be found here <http://www.riksbank.com/templates/Page.aspx?id=9392>.

¹³ These are Nordea, SEB, Swedbank, SHB, and Danske Bank.

¹⁴ In different configurations for individual banks these include authorities from Estonia, Finland, Denmark, Germany, Latvia, Lithuania, Norway, Poland, and Sweden (the Bank of Lithuania also has supervisory responsibility).

Baltic cooperation framework should be tested through a joint exercise once these elements have been developed.¹⁵

- ***Strengthening FI's staff and resources for running supervisory colleges it chairs.*** The college work is resource-intensive and it is important to ensure that for core supervisory functions are not undermined by administrative work entailed in running the colleges. The FI has been found in need of additional resources to be able to ensure minimum and consistent levels of supervision across all supervised entities and markets by the assessments of the observance of standards and codes.¹⁶ In view of these assessments, it would be desirable if FI were put in a position to be able to dedicate additional staff to support the college agenda.
- ***Speed up the work on a common platform for information exchange implied by the bank-specific MOUs.*** The ability of FI to spearhead this important joint project is hampered by resource constraints.

III. EMERGENCY LIQUIDITY ASSISTANCE

19. **ELA is a standard—albeit rarely used—central bank tool.** ELA can be defined as the discretionary provision of liquidity by the central bank to a financial institution that could not otherwise access liquidity.¹⁷ The primary responsibility for reducing the incidence of liquidity problems rests with the market participants themselves. ELA should never be seen as an obligation of the central bank. However, in extreme circumstances ELA can be needed to: (i) prevent illiquidity at an individual bank from unnecessarily leading to its insolvency and systemic implications for the financial system as a whole; and (ii) avoid runs that spill over from bank to bank that could pose systemic stress. Moral hazard is best avoided by providing ELA only in exceptional circumstances. Furthermore, the central bank can manage its own credit, market and liquidity risk in its provision of ELA by requiring collateral from the borrower with the sufficiently prudent haircuts and other terms.

20. **RB's mandate for ELA to an individual institution is robust for dealing with domestic liquidity problems.** RB is authorized by law in exceptional circumstances to support liquidity to provide credit or guarantees to banks and Swedish companies subject to

¹⁵ This process depends on reaching a multilateral consensus among the relevant country authorities and is thus not under control of Swedish authorities only. The relevant working groups to implement the 2010 MOU have been set up and it is important to maintain the momentum of cross-border cooperation fostered during the crisis.

¹⁶ See the Aide Memoire, Section IV.

¹⁷ The term ELA in this note is meant to cover provision of liquidity to individual institutions only. For systemic liquidity management both through standard central bank instruments and via exceptional measures deployed by the RB in the recent crisis see the Technical Note on “Reviewing the Systemic Liquidity Risk Management Framework” by Kotaro Ishi.

FI supervision. Its ELA policy has been publicly communicated and tested in the recent crisis. Provisions of the law provide RB with a large degree of flexibility; and in line with a longstanding Swedish tradition it has been transparent about its ELA policy principles to the public (Box 2).

21. **The operational framework for ELA is sound.** Internal RB guidelines exist, which cover the decision-making process, collateral acceptance and valuation, and other terms and conditions. Communication with other relevant agencies is enabled by strong legislative backing for information exchange. Nevertheless, consideration might be given to specifying a consultation between the FI and RB on ELA, for instance in the bilateral cooperation agreement between the RB and FI, in particular regarding the types of solvency and viability assessments that could be carried out.¹⁸ Any institution that has benefitted from ELA should be subject to intensified supervision and measures designed to restore its access to market liquidity.

22. **RB's scope for granting ELA relative to SNDO's scope for providing liquidity under the terms of the Support Act needs to be clarified.**¹⁹ The experiences from the crisis show that the existing legislation in the RB Act regarding the RB's possibilities to grant ELA gave the RB sufficient room to manage the cases that arose during the crisis. However, when the SNDO became a support authority under the Support Act in 2008, an issue emerged of how the RB's scope for granting ELA works in relation to the SNDO's scope for providing liquidity assistance under the terms of the Support Act. RB is expected to deal only with solvent institutions while insolvent systemic institutions would be supported by the SNDO under the State Support Act.²⁰ If RB were to consider acting as a payment agent for the liquidity assistance by the SNDO under the State Support Act to an insolvent institution, it should do so only after an agreement with the SNDO on the subsequent course of events.²¹ The authorities need to be mindful of the need to comply with the prohibition of monetary

¹⁸ While sufficient grounds to exchange this information between the RB and FI are provided in the existing legislation, effective consultation would be facilitated if an ex ante understanding existed among the parties on its elements and necessary supporting data and analytical tools.

¹⁹ The authorities recognize this problem which has been put forward as a task for the committee for review of the crisis management framework appointed by the government.

²⁰ While not explicitly dealt with in the RB Act, this division of labor can be derived from the Preliminary work for the Sveriges Riksbank Act amendment, government bill proposal 1997/98:164, May 1998, p. 28 and the Preliminary work for the Government Support to Credit Institutions Act, government bill proposal 2008/09:61, October 2008, Annex I.

²¹ An illustrative case study for a need of such close cooperation was nationalization of Carnegie Investment Bank AB (CIB). In October 2008 the RB granted emergency liquidity assistance facility to CIB against collateral which consisted of inter alia the shares of CIB, while FI investigated the bank for various violations. Later, the SNDO provided CIB a support loan that replaced RB's ELA. In November, when FI revoked CIB's license, the SNDO took over the CIB shares which were posted as collateral for the support loan, i.e., the bank was nationalized. Based on the state being the new owner, FI then immediately restored CIB's license to enable its restructuring as a going concern. The bank has been eventually returned to private ownership in May 2009. A legal case is underway in the special Appeals Board at the time this note has been drafted regarding the application of the Support Act in this case as the collateral valuation has been appealed by the former owners of

(continued)

Box 2. The Riksbank's Public Policy Statement on ELA¹

The following principles and conditions will guide the RB's ELA policy according to its public statement.

- **Primary objective:** To promote a safe and efficient payment system.
- **Eligible institutions:** Banks (including branches of foreign banks) and Swedish companies subject to FI supervision. ELA to institutions that are not members of RIX will be paid out through a member bank.
- **Liquidity support only:** The RB will support an illiquid but solvent financial institution, while the government is expected to deal with an insolvent one. Solvency assessment is aimed at assessing long term survival capacity of an institution, including its balance-sheet solvency, business model, profit generation capacity, and capacity to resolve capital problems without further public interventions, even if the bank momentarily does not meet the capital adequacy requirements. RB recognizes that the assessment of systemic risk and financial condition under a time pressure will be based on imperfect information.
- **Collateral requirements:** In a crisis situation, the RB can consider accepting as collateral other assets than those normally accepted in interbank trading and in the RIX system, for example equity or loan claims. A haircut will take into account uncertainties in valuation.
- **Interest rate:** The interest rate on ELA is determined case by case. The RB will normally charge higher rates than the normal lending rate in order to counter moral hazard and to take account of higher risks, while recognizing that too high an interest rate could jeopardize the purpose of the assistance by creating solvency problems.
- **Transparency:** ELA provided by the RB will be public information, even in the unlikely event that the markets had no knowledge of it. The precise terms and conditions of credit will not be disclosed, however, to market participants.
- **Foreign currency lending:** If spot or swap markets were not functioning due to the perceived counterparty risk, the RB could provide credit in foreign currency or offer an outright swap. The RB may also mediate between lenders and a problem institution and if necessary issue a guarantee.
- **Other conditions:** The RB may provide ELA to a financial institution that has an intention to rescue other problem institutions, require that the institution receiving ELA takes measures to increase its liquidity for instance by reducing the size of its loan portfolio or impose special requirements for access to information and reporting, as applied during the recent crisis. The RB may issue a guarantee as an alternative to granting credit, if this would be a more appropriate response to exceptional circumstances.

¹ See Riksbank Financial Stability Report 2003:2, pp. 57-73 and Preliminary work for the Sveriges Riksbank Act amendment, government bill proposal 1997/98:164, May 1998, p. 28.

financing in the EC Treaty.²² It is also important to consider how the RB's liquidity assistance should be handled if the institution receiving this assistance later becomes insolvent or in some other way no longer meets the requirements for the assistance. Further work might be needed also on modalities of addressing cross-border liquidity problems.²³

23. Summarizing, authorities could consider following improvements of the ELA framework:

- *Formalize RB and FI cooperation in assessing solvency and viability in the context of ELA* in a bilateral cooperation agreement and reach a common understanding on necessary supporting data and analytical tools. It would be beneficial for SNDO to participate in developing mutual understanding of key elements of such assessment.
- *Clarify the RB's scope for granting ELA relative to SNDO's scope for providing liquidity under the terms of the Government Support Act in different stages of the crisis.*

IV. CRISIS MANAGEMENT AND RESOLUTION²⁴

24. Bank failures in the recent crisis, although handled in a relatively effective manner, revealed shortcomings in the toolkit for dealing with failing banks. A robust and flexible framework that would provide the resolution authorities with the tools and mandate to resolve ailing institution at an earlier stage is needed. This gap is particularly acute for non-systemic banks.

²² The ECB Governing Council provided interpretation of this prohibition by stating that support to insolvent institutions is not compatible with it. Furthermore, financing by central banks of a public sector national deposit insurance or investor compensation scheme would not be compatible if it is not short term, does not address urgent situations, systemic stability aspects are not at stake and the decision to grant support is not at the discretion of the central bank. See e.g., Report and Recommendations of the Cross-Border Bank Resolution Group, BCBS March 2010, p. 23 at <http://www.bis.org>.

²³ See the technical note "Reviewing the Systemic Liquidity Risk Management Framework" by Kotaro Ishi.

²⁴ In October 2010, the European Commission launched a consultation on a new EU framework for crisis management in the financial sector to pave the way for legislation due in 2011 which will create a comprehensive crisis management framework for banks and investment firms. Swedish authorities participate actively in this work and the final recommendations should be taken into account when shaping the Swedish framework. See http://ec.europa.eu/internal_market/bank/crisis_management/index_en.htm. In March 2010, the Basel Committee on Banking Supervision published a report and a set of recommendations prepared by its Cross-border Bank Resolution Group which provides further resource for work on the resolution framework for SIFIs. See Basel Committee, *Report and Recommendations of the Cross-border Bank Resolution Group* (March 2010) at <http://www.bis.org/publ/bcbs169.htm>.

A. Framework for Dealing with Systemic Crises

25. **The framework for official financial support to SIFIs and for temporary public ownership following a capital injection is a pragmatic reaction to Swedish financial sector market structure.** The legislation enabling government support to financial institutions headquartered in Sweden has been enacted at the height of recent crisis.²⁵ A possibility of aid is envisaged for both continued operation (going concern) of a credit institution and to support orderly liquidation or restructuring of a credit institution that is no longer deemed viable. This measure builds on the experience with earlier financial crises in Sweden. Due to the oligopolistic structure of the Swedish banking sector, where a relatively small number of large systemic institutions dominate the market (complemented by a very large number of small banks), the winding up of one of the large banks in a crisis could lead to significant competition consequences. In such a setup, resolving the systemic institutions as a going concern might be preferable provided appropriate measures are taken to mitigate moral hazard posed by shareholders and bank managers. The Swedish framework is a pragmatic response to this situation.

26. **The act allows for the state takeover of a troubled institution as a last resort measure while entrusting the SNDO with a wide range of powers.** The SNDO is designated as the support authority responsible for handling support measures (guarantees, capital injection, or support in “other manner” as needed).²⁶ It has the right to nationalize an institution if it is of extraordinary importance from the public perspective and (i) has a capital ratio below 2 percent, or (ii) refuses to reach an agreement on support on conditions found reasonable by the Appeals Board, or (iii) does not fulfill its obligations in the support agreement. This decision also gives rise to a right to buy out warrants and convertibles issued by the company. A decision to provide support under the broad mandate of the Support Act requires approval of the government.

27. **The law created a Stability Fund to be used to fund future support measures and associated administrative costs.** Credit institutions are required to pay a special stability fee amounting to 0.036 percent of balance sheet total excluding equity capital and subordinated debt. Payments are placed in an interest-bearing account at the SNDO. The target for the fund has been set at 2.5 percent of GDP within 15 years. The fund enjoys automatic unlimited backing by the SNDO. At the time this legislation was enacted, an eventual merger of the stability and DGS funds was envisaged together with an introduction of (single) risk-based fees for the merged fund. Harmonization efforts are currently underway at the EU level

²⁵ In October 2008, the Government Support to Credit Institutions Act (2008:814, “Support Act”) was enacted alongside a package of other measures aimed at increasing confidence and stability of the financial sector. See also Box 5 in the Aide-Mémoire.

²⁶ Specific tools are detailed in government ordinances, including rules on fees paid by credit institutions for support and restrictions on remuneration during the support period.

with respect to stability funds and deposit guarantee schemes. Consequently, not to pre-empt these efforts in a particular national arrangement, the Swedish authorities are addressing these issues at the EU level.

28. **Authorities are seeking ways to mitigate moral hazard using an option of writing down unsecured receivables after writing down share capital to the fullest possible extent (a ‘bail-in’ concept).** The authorities participate in international fora developing approaches that would enable resolution authorities to write down the claims of some or all of the unsecured creditors and to convert debt into equity.²⁷ Such options would usefully complement the present framework once agreements at the international level are reached about important modalities of this approach. The proposed legal framework for implementing this important resolution tools needs to be coordinated at international level, including by taking into account work done by the Basel Committee on Banking Supervision (BCBS) and the Financial Stability Board, in order to preserve a level playing field and avoid unintended consequences on the functioning of bank debt markets. Also, the phasing in of such mechanisms needs to be carefully planned.

29. **Valuation principles for a takeover operation might need to be detailed further.** One of the stated objectives of the Support Act—in line with best international practice—is to prevent company’s shareholders to benefit from the state aid. The law simply states that valuation of the shares must be undertaken as though the company had not received state aid. It might be desirable, depending on the outcome of the Appeals Board deliberations on the case of Carnegie bank, to specify this principle further. The act might for example oblige the Appeals Board to take into account the situation of the financial institution at the moment immediately preceding the act of takeover and consider what its financial situation would have been if it had not, directly or indirectly, received state aid, ELA or public guarantees.²⁸ Using a bridge bank P&A is an alternative that would leave the shareholders behind in receivership along with contingent and other liabilities thus helping to mitigate also the sovereign liability risk.

²⁷ RB Deputy Governor Lars Nyberg summarized his views regarding the bail-in concept and contingent convertible bonds in his speech in Stockholm on April 1, 2011. See <http://www.riksbank.com/templates/SectionStart.aspx?id=10889>.

²⁸ In line with the strong shareholder and creditor preference inherent in the European Convention on Human Rights, the law has to define the compensation to be paid to the owners of the assets or the holders of the rights covered by the act of disposal in some manner. Similar provisions exist in other EU countries, for instance in Belgium. See financial crisis laws of June 2, 2010: *Loi visant à compléter les mesures de redressement applicables aux entreprises relevant du secteur bancaire et financier* and *Loi complétant, en ce qui concerne les voies de recours, la loi du 2 juin 2010 visant à compléter les mesures de redressement applicables aux entreprises relevant du secteur bancaire et financier*, both published in Belgisch Staatsblad/Moniteur Belge on June 14, 2010.

30. **Going forward, the following issues warrant further consideration once the EU-wide approach has been clarified:**

- ***The interaction and the distribution of costs between the stability fund and DGF.***
Given the high concentration of the banking sector, envisaged merger of the stability fund and DGF could be warranted on practical grounds in Sweden. However, authorities are encouraged to weigh legitimate pros and cons of such a decision as well as the outcome of the ongoing EU-wide discussion on resolution and DGS funds. A merger could potentially have a negative impact on confidence of depositors in smaller non-systemic banks that a backstop of their deposits would be available.
- ***The rate of contribution might be adjusted for the systemic importance of an institution and vary over the economic cycle.***
- ***Fees on an ongoing basis might be preferable to setting a fixed target fund size.***
Such fees would reflect the implicit state guarantee to SIFIs implied by the existence of Support Act and be collected on a notional account to facilitate efficient state assets and liabilities management.

B. Bank Resolution and Deposit Insurance

Bank insolvency

31. **The FI has a broad range of corrective and remedial powers enshrined in the law, allowing it to implement various measures when faced with a weak bank.** When a credit institution has violated its obligations under the Banking Act, FI is required to intervene and has powers to restrict the activities and limit the operation of a credit institution. Where the infringement is serious, the credit institution's licence shall be revoked or, a warning shall be issued. FI has powers to replace a managing director or any member of the Board and may order an owner with a qualified holding to divest shares. Though there are no formal triggers for early intervention powers and to require prompt corrective action, FI would be able to (and typically would wish to) exert supervisory pressure at an early stage. Having traditionally relied on a consensual approach to many of its supervisory interactions, FI is currently moving to a more assertive and formal follow up. The assessment of the Swedish implementation of the Basel Core Principles for Effective Banking Supervision noted, however, that there are gaps and limitations in FI powers. FI's powers of sanction and decision making can also be affected by legal uncertainty.²⁹

32. **Sweden does not have specific rules on bank insolvency other than the Support Act.** This means that general rules on bankruptcy, liquidation and winding up which apply

²⁹ See Basel Core Principles for Effective Banking Supervision, Detailed Assessment of Observance.

for all other companies, also apply to credit institutions with an exception of the Company Reorganization Act (1996:764). Corporate insolvency is, however, ill suited for efficiently handling bank resolution.³⁰ While in some cases authorities have been able to achieve relatively swift resolution of failed banks, in others the process has been very prolonged and liable to create risks to financial stability in a less than benign overall economic environment (Box 3).³¹

33. **The ability of the shareholders to appeal the decision of the FI in multiple courts and have FI action stayed, complicates effective resolution.** If a bank's license is revoked, it shall be put into liquidation and the liquidation cannot be terminated.³² However, the effective enforcement of the license withdrawal can be stayed by the court while it rules on an appeal against license withdrawal. The fact that liquidation (which may end up not being orderly if an appeal is launched) cannot be prevented upon revocation is one of the potential deterrents for FI using its revocation power. The fact that a (former) bank can end up in this legally unclear status can create further market confusion, including with regard to its status as counterparty in its outstanding transactions. The FI has only a broadly formulated right to determine the manner in which a credit institution shall be wound up if its license is revoked and can exercise supervision powers with respect to the liquidators appointed by the court. However, no specific tools for resolving the bank are available to FI. As an orderly winding-up of a non-systemically important deposit taking institution in liquidation is not formally assured, depositors have every incentive to try to withdraw their funds, increasing losses of insured depositors, promoting contagion and creating a bias toward avoiding this by nationalization or use of public funds via the Support Act potentially even in non-systemic cases.

34. **While the FI can revoke license, it cannot place an insolvent institution into bankruptcy.** In Sweden, only shareholders or creditors can petition for bankruptcy.³³ Creditors could petition for bankruptcy when a credit institution cannot meet current creditor claims while shareholders, recognizing that the institution is insolvent, can also file a petition. The insolvency test, defined as inability to pay debts as they fall due, is

³⁰ See for example Hupkes (2003) *Insolvency—Why a Special Regime for Banks? Current Developments in Monetary and Financial Law*, Vol. 3, IMF, for compelling arguments on why special regime for banks is preferable.

³¹ The relative ease of HQ bank resolution could have been further influenced by the nature of its business—private banking for high-net-worth clients, investment banking and mutual funds.

³² Banking and Financing Business Act (2004:297), Chapter 10, Section 31.

³³ See Bankruptcy Act (1987:672).

Box 3. Timeline of Events in HQ Bank and Custodia Cases

HQ Bank

- **2007–2008.** The FI investigated the valuation of complex products, highlighting a weak internal control with several weaknesses and deficiencies. The investigation has been publicly announced at end-2007.
- **August 28, 2009:** The external and internal auditor found ineffective risk management.
- **Fall 2009–Spring 2010:** The FSA queried the adequacy of the bank's stress tests, and on that basis, the assessment of its capital adequacy.
- **May 18, 2010:** HQ Bank informed the FI of its plan to terminate trading and trading portfolios, but did not indicate significant losses.
- **May 26, 2010** HQ AB (publ), the holding company, announced plans for a capital increase, by issuance of new shares, of 559 million SEK to cover losses from the termination of the trading portfolio.
- **June 8, 2010** HQ AB (publ) instead announced a sale of HQ Fonder Sverige AB to Investment AB Öresund (publ) ("Öresund") for 850 million SEK aimed at immediately strengthening the capital situation. The intention was to buy back HQ Fonder after an issuance of new shares in September.
- **August 27, 2010 (Friday):** The bank announced terms for a capital increase for up to SEK 1bn.
- **August 28, 2010 (Saturday):** The FSA announced revocation of the banking and securities licenses of HQ Bank AB for serious deficiencies in its trading operations and for risk taking that was so large as to compromise its survival. According to FI's decision, a correct valuation would have shown that the bank was undercapitalized since December 2008.

The bank announced its intention to open on Monday and said in it had good financial strength and liquidity.

- **August 30, 2010 (Monday):** Stockholm District Court Appoints a Liquidator. The bank did not reopen for customers based on liquidator's decision.

HQ Bank management challenged the FI's decision and indicated its intention to appeal to the Administrative Court in Stockholm.

- **September 3, 2010 (Friday):** The FI **approved CIB's acquisition of HQ Bank and HQ Fonder (Carnegie has long been one of HQ's counterparties)**. FI also approved a plan for the merger of the two banks. In its decision FI justified approval by stating that a liquidator's task of winding up HQ business in an orderly fashion and without compromising the interests of customers is best effectuated by transferring the business through a merger.

Custodia

- **Fall 2005:** Custodia is a small credit market institution with SEK 250 million in deposits. FI finds management, internal control and credit underwriting problems at Custodia during an onsite inspection.
- **January 2006:** FI revokes Custodia's license due to deficiencies in internal controls and credit underwriting.

Custodia appealed the decision to the district court and the court stayed the enforcement of FI's license revocation. Custodia continues to accept deposits.

- **April 26, 2006:** The court rejected appeal and confirms FI decision. Custodia is thereafter unable to accept deposits. Despite this, the license could still not be revoked pending the Administrative Court of Appeals ruling.
- **August 28, 2006:** Despite having not received a court ruling, the shareholders themselves place the institution in bankruptcy.
- **September 2006:** In response to bankruptcy filing, the appeals court rejects the appeal as moot.
- **Early 2007:** The insured depositors were repaid more than one year after the FI sought to revoke Custodia's license. The value of portfolio declined dramatically during the process while some uninsured deposits were withdrawn prior to bankruptcy thereby increasing the loss proportion covered by DI.

Source: Public information notices by FI at <http://www.fi.se/Folder-EN/Startpage/Press/Press-releases/Listan/>

inappropriate for banks due to the nature of banking business.³⁴ Furthermore, in most countries, unlike in Sweden, banking supervisors are empowered to initiate bank insolvency proceedings, and in many countries they are given exclusive competence to do so.³⁵ This approach recognizes supervisors' superior information about the bank's viability stemming from the ongoing involvement in evaluating assets and determining bank solvency.

35. In bank insolvency, prompt action is of essence justifying the special toolkit.

Financial assets can be dissipated quickly and banks are vulnerable to the loss of confidence with potentially damaging repercussions. Concern for creditor rights in a general bankruptcy process must therefore be seen in this context and the foremost objective of a failed bank receiver is to minimize the impact of bank's failure on the rest of the financial system. In certain circumstances, this might justify a departure from equal treatment of all creditors ("pari passu") which holds in general insolvency. For instance, experience from the United States shows benefits of giving preference to insured depositors up to the amount of insured deposits. Likewise, it might be necessary to sell business or parts of it into an unfavorable market to avoid market disruptions. Also, an ability to impose full or partial suspension of payments and stay of enforcement (moratorium) might be needed to protect depositors.³⁶

Deposit insurance

36. Swedish DGS mandate is narrowly defined and its trigger does not facilitate uninterrupted access of depositors to their funds.³⁷ Key features of the current DGS are summarized in Appendix I and compared to the best international practice. The DGF can only be used to pay depositors that incur losses as a result of a financial institution's

³⁴ Generally, the regulatory determination of insolvency occurs prior to the threshold for commercial companies. Once a bank is proven insolvent, it would be too late to intervene effectively. Hence, a more appropriate trigger for bank resolution would be when upon a determination by a supervisor an institution no longer fulfils, or is likely to fail to fulfill, the regulatory conditions for its continued authorization, provided that no other measures are likely to avert failure. This is one of the options for resolution triggers offered by the EU consultation on crisis management. See consultation on the EU Framework for Cross-Border Crisis Management in the Banking Sector http://www.ec.europa.eu/.../crisis-management/091020_communication_en.pdf

³⁵ See IMF/WB (2009), An Overview of Legal, Institutional, and Regulatory Framework for Bank Insolvency, available at <http://www.imf.org/external/np/pp/eng/2009/041709.pdf>.

³⁶ The Swedish authorities expressed support to this measure in their public response to the EU crisis management consultation provided that temporary suspension of rights shall not be applicable to designated payment systems and central banks. Furthermore, the use of a temporary suspension may come in conflict with the EU Settlement Finality Directive (98/26/EC) which would need to be resolved.

³⁷ A government proposal for Deposit Insurance Act amendments has been presented to Parliament in April 2011 with an intention for them to enact the bill on July 1, 2011. The proposal is aimed at ensuring Sweden's compliance with the revised EU Deposit Insurance Directive and entails inter alia shortening the payout deadline to 20 days, stricter information requirements for institutions collecting insured deposits and a new trigger for payout dependent on FI's decision. The proposed amendment would also improve information exchange between the FI and SNDO on matters related to deposit insurance. The proposal can be found here: <http://www.regeringen.se/content/1/c6/12/56/79/4f889895.pdf>.

bankruptcy. It has no role in bank restructuring. At present, the payout to insured depositors is triggered only after the institution has been placed into bankruptcy. Bankruptcy trigger for DGS both distorts the purpose of limited DGS and increases the cost to deposit insurer. Delays in reimbursement (such as those experienced in Custodia case) can lead to contagion in the banking sector and runs on other banks. Delays can also cause financial hardship for depositors, who may lack funds for everyday living expenses.

37. **The DGS has been rarely activated and on these occasions has only been used for very small institutions, making contingency planning important.** Since 1996, when the DGS was introduced, there have been only three failures leading to a payout. Two occurred in 2006 and some 1,500 depositors received approximately SEK 175 million. During the financial crisis in 2008–2009 there were no failures where the DI had to be involved. In early 2010, a Danish bank with a branch in Sweden went bankrupt that had a topping-up arrangement with the Swedish DGS.³⁸ This puts onus on regular exercises and operational guidelines to maintain the scheme operational.

Recommendations

38. **To complement current framework for dealing with SIFIs, authorities should introduce a special bank resolution framework for all institutions accepting insured deposits.** Special resolution tools (including through orderly liquidation) should apply for all troubled institutions, whether or not ex ante they are considered systemic. The aim of this process should be to ensure continuity of critical functions, minimize public financial support, and reduce legal uncertainty. Such tools would allow for a prompt resolution, which mitigates depositor contagion and therefore reduces the risk of an idiosyncratic failure developing into a systemic event.

39. **Special bank resolution framework and legislative changes to DGS should be introduced in a single legislative package to ensure legal consistency.** Such a framework could be based on the following principles:

- ***The FI should be given the right to petition for insolvency of deposit taking institutions.*** FI could be given exclusive right to petition for insolvency. Alternatively, it might be specified that no insolvency proceedings may be opened against a deposit taking institution without the explicit consent by FI, while other stakeholders in the bank (e.g., management and/or creditors) could be allowed to

³⁸ In total SEK 11 million was paid from the Swedish scheme to 825 depositors. The Danish deposit guarantee scheme handled the administration of the case.

petition as well. In the latter case, FI should also be entitled to participate in all stages of the proceedings.³⁹

- ***FI should be given powers to initiate special bank resolution on an administrative basis with a pre-insolvency regulatory threshold and the role of the liquidator should be clearly specified.*** The FI should be given powers to initiate special bank resolution administratively based upon the regulatory criteria and at a sufficiently early stage (i.e., before insolvency is triggered).⁴⁰ The liquidator should be overseen by the FI. Transfer (sale) of assets, including subsidiaries, with assumption of liabilities to third-party acquirers (purchase and assumption or P&A) should be enabled. To facilitate these transactions, authorities might subject certain liabilities to a selective stay with exclusions to preserve stability of payments system and protect the central bank transactions.⁴¹
- ***The DGF should be authorized to support bank resolution operations,*** such as in particular via a transfer of insured deposits to another bank through a P&A transaction (i.e., with corresponding amount of assets) or to a bridge bank managed by the government until an assuming bank is found. DGF funds supporting a bank resolution should not exceed the amount that would have been expended in the course of a normal liquidation.⁴²
- ***The insolvency regime for depository institutions should establish a clear priority of claims.***
- ***Authorities could consider giving (insured) depositors a preference in creditor ranking.*** Such a preference would provide a mechanism to recover the DGS pay-outs

³⁹ This approach seeks to preserve the rights of stakeholders in the bank and avoid the risk of undue delays on the part of authorities. Where parties other than supervisor are allowed to petition, the good practice would imply that the law should require prior consent by the banking authorities. See IMF/WB (2009), An Overview of Legal, Institutional, and Regulatory Framework for Bank Insolvency.

⁴⁰ The approach would need to respect the outcome of the EU-wide crisis management consultation. One of the proposed approaches that would provide sufficient flexibility would be a power to apply the resolution tools and exercise resolution powers when a credit institution no longer fulfils, or is likely to fail to fulfill, the regulatory conditions for its continued authorization, provided that, as suggested by the European Commission, no other measures are likely to avert the failure. This would entail a combination of quantitative (such as e.g., capital adequacy) and qualitative triggers.

⁴¹ The European Commission is proposing a temporary stay on the exercise of close-out netting and set-off rights following the notification of resolution in its consultation document on a crisis management framework for the European Union. This would require amendments to the relevant directives, notably the Financial Collateral Arrangements Directive.

⁴² DGS can be used to support a non-liquidation bank resolution in a number of the EU member states, such as for example Austria, Belgium, France, Italy, Latvia, Spain, and the U.K.

from the bank estate and thus reduce the need for official support while justifying a transfer of insured depositors to a healthy bank (P&A).⁴³

- ***A possibility that a court appeal stays supervisory action (license revocation) should be removed, while preserving the rights of appeal.*** The shareholder should be entitled to compensation only if the FI acted improperly. The economic interest of shareholders is protected if they are entitled to monetary damages, rather than a reversal of a supervisory decision leading to a destruction of remaining value in the deposit taking institution.⁴⁴ Limitations should be considered also as regards other resolution powers, such as for example the possibility to stay transfer transactions.

40. **While work on this comprehensive reform package proceeds, the existing DI framework should be improved as an interim step along the lines of the recent government proposal.** Such a reform would be consistent with the ultimate goal and the ongoing EU debate about the future of the EU-wide DGS framework, and could include:

- ***Change in the DGS trigger.*** DI funds should become available to depositors upon the revocation of the license by FI.
- ***Shorter maximum legal period for payout of deposits at failing banks (a maximum of 20 days implied by the current EU directive).*** The option to prolong this period should be removed and a possibility to mandate an even shorter payout limit should be explored.
- ***Exploring ways to accelerate payouts.*** The SNDO is encouraged to explore technical ways to accelerate the payout to below the statutory limits. Standard means of a payout include a use of a bank with a wide branch network as a payment agent or the SNDO itself may serve as a payment agent as well once data on individual accounts are available.⁴⁵

⁴³ As an alternative, a two-tiered approach could be considered, wherein a smaller (insured) portion enjoys a higher priority, followed by all other deposits (that are not excluded from DGS coverage), followed by general creditors.

⁴⁴ Maintaining financial stability via prompt and effective resolution is in public interest. The European Convention on Human Rights enshrines property rights but also recognizes that this right can be constrained. No one should be deprived of property “except in the public interest and subject to the conditions provided for by law.” The European Court of Human Rights has ruled that it will “respect the legislature’s judgment as to what is in the general interest, unless this judgment is manifestly without reasonable foundation.” [Mellacher vs Austria (1089) 12 EHRR 391]. A special resolution framework whose objective was firmly grounded in the interest of preserving financial stability would not conflict this principle. See also Cihak Martin and Erlend Nier (2009): “The Need for Special Resolution Regimes for Financial Institutions—The Case of the European Union,” IMF Working Paper 09/200, Washington, D.C., International Monetary Fund.

⁴⁵ The high concentration of the Swedish banking sector and competition implications should be taken into account.

- ***Set up a legal obligation for FI to communicate with the SNDO sufficiently in advance prior to the triggering of DGS*** once it concludes that payment might be triggered in the future.
- ***Ensure that the SNDO has access at an early stage to reliable information about depositors and their deposits so as to make payments automatic.*** Deposit taking institutions should be legally required to keep an up-to-date database of depositors' identification data and deposit balances on a "single customer" basis consolidating the deposits of an individual in different accounts in the bank. Setting up such systems can be time consuming and cannot wait until the bank has failed. These data would be transmitted to the SNDO when the payout has been triggered. The DGF would then hold a claim against the liquidated bank and could ascertain the legality of all claims. Early involvement and advance preparation of DGF/SNDO in the problem bank resolution process is key for ensuring prompt reimbursement of insured depositors.

APPENDIX I: OBSERVATIONS ON THE SWEDISH DEPOSIT INSURANCE SCHEME

41. **The BCBS and the International Association of Deposit Insurers (IADI) issued the Core Principles for Effective Deposit Insurance Systems in June 2009.**⁴⁶ The Swedish DI design has been analyzed against this indicative international standard based on the applicable laws, regulations and information provided by the authorities during the mission. The table below summarizes main observations. It is not an assessment of compliance. Where appropriate, the new government proposal for DI act amendments is taken into account.⁴⁷

42. **In July 2010, the European Commission adopted a legislative proposal for a thorough revision of the EU Directive on Deposit Guarantee Schemes.**⁴⁸ These proposed amendments follow urgent legislative changes that entered into force in early 2009 and raised the minimum coverage of DGS in the EU (€ 50 000 by end-June 2009 and 100 000 by end 2010), reduced the deadline to decide if a bank has failed, reduced the payout delay, and abandoned the concept of coinsurance. The new proposals mainly deal with a harmonization and simplification of protected deposits, a faster payout (the limit is still subject to a discussion), and an improved financing of schemes and complement separate EU consultation on crisis management and bank resolution.⁴⁹

⁴⁶ See the *Core Principles for Effective Deposit Insurance Systems*, July 2009 and the *Core Principles for Effective Deposit Insurance Systems: A Proposed Methodology for Compliance Assessment*, December 8, 2010 at <http://www.bis.org>.

⁴⁷ See <http://www.regeringen.se/content/1/c6/12/56/79/4f889895.pdf>.

⁴⁸ See Directive 94/19/EC of the European Parliament and the Council on Deposit Guarantee Schemes as amended by Directive 2009/14/EC in 2009. EU Official Journal at L 68, March 13 2009, at http://ec.europa.eu/internal_market/bank/guarantee/index_en.htm

⁴⁹ See The European Commission *Proposal for a Revised EU Directive on Deposit Guarantee Schemes* [recast] July 12, 2010 and related documentation at http://ec.europa.eu/internal_market/bank/guarantee/index_en.htm

Table A1. Key Features of the Swedish Deposit Insurance and the IADI Core Principles for Effective Deposit Insurance Systems

BCBS/IADI	Current Swedish System
The Core Principles for Effective Deposit Insurance System	Deposit Insurance Fund managed by the SNDO⁵⁰
1. Public policy objectives should be formally specified. Principal objectives are to contribute to the stability of the financial system and protect depositors.	<ul style="list-style-type: none"> ✓ The Deposit Insurance Act does not state the objective of the system. ✓ The objective is stated in the public communication of the insurance authority—SNDO—as “to protect savers and investors and help to maintain the stability of the financial system.”
2. Moral hazard should be mitigated through design features and other elements of the financial system safety net.	<ul style="list-style-type: none"> ✓ In line with the EU-wide requirements, the guarantee is capped at a fairly generous level of € 100 000 per depositor. ✓ Close to 100 percent of the accounts are covered. ✓ The State Support Act is designed to minimize moral hazard with the nationalization option where a valuation of shares must be undertaken without taking into account the state aid. ✓ Absence of effective and speedy resolution tools for non-systemic institutions could encourage moral hazard.
3. The mandate should be clearly and formally specified and that there should be consistency between the public policy objectives and insurer’s powers and responsibilities.	<ul style="list-style-type: none"> ✓ Mandate specified as a narrow pay-box. ✓ DGF can only be used to pay out depositors that incur losses as a result of financial institution bankruptcy.
4. Powers should be formally specified and sufficient to achieve the mandate: to finance reimbursements, to enter into contracts, to set budgets and procedures, and to access timely and accurate information.	<ul style="list-style-type: none"> ✓ SNDO powers are not formally specified in the Deposit Insurance Act. ✓ Narrow in line with the pay-box mandate. DGF has no role in bank restructuring. ✓ The SNDO decides on the fees paid by the institutions in line with the law (Section 13 of the Act). ✓ It can exclude members and can charge penalty interest on arrears. ✓ Financial institutions must provide SNDO all information necessary for its operations (Section 16 of the Act). Each year, banks report to it by on their guaranteed deposits at previous December 31 and this information must be audited by external auditors. ✓ Disputes are settled by administrative courts.

⁵⁰ See Deposit Insurance Act (1995:1571). English translation provided by authorities.

<p>5. Governance: the DGS should be operationally independent, transparent, accountable, and insulated from undue political and industry influence.</p>	<ul style="list-style-type: none"> ✓ DGF is endowed with appropriate autonomy within the SNDO with its responsibility and accountability clearly set forth. ✓ Staff has been dedicated and trained within SNDO to perform DGS tasks should the Di event be triggered. ✓ The day-to-day operations are managed by the guarantee department of the SNDO. The fund is managed by the Legal, Financial and Administrative Services Agency (Kammarkollegiet) on behalf of the SNDO. ✓ Authority Ordinance (2007:515) sets the management of the state authority is accountable to the government. SNDO is a state agency under the jurisdiction of the MOF.
<p>6. Relationships with other safety net participants should be formalized for the close coordination and information sharing, on a routine basis, as well as in relation to particular banks (subject to confidentiality when required).</p>	<ul style="list-style-type: none"> ✓ Legal basis for information exchange is clearly set out in the relevant legislation. ✓ The framework for cooperation between relevant domestic authorities is set out in the MOU ✓ The MOU does not cover routine information exchange in detail. ✓ The latest government proposal would improve and codify information exchange between the FI and the SNDO.
<p>7. Cross-border issues: Provided confidentiality is ensured, all relevant information should be exchanged between deposit insurers in different jurisdictions and possibly between deposit insurers and other foreign safety-net participants when appropriate. It is important to determine which deposit insurer or insurers will be responsible for the reimbursement process.</p>	<ul style="list-style-type: none"> ✓ Arrangements are not mentioned in the law, are ad hoc and follow the EU practice. ✓ Reimbursement of Danish bank branch with the topping-up arrangement with the Swedish DGF in early 2010 illustrated functionality of arrangements. SEK 11 million was paid from the Swedish DGS. The Danish scheme handled the administration.
<p>8. Compulsory membership for all institutions accepting deposits from those most in need for protection.</p>	<ul style="list-style-type: none"> ✓ Membership is compulsory for institutions licensed to hold customers' funds on account (Section 2 of the DI Act), including for branches of non-EU banks and branches of Swedish banks operating in other EU member states. ✓ Branches of banks from other EU states can "top up" their coverage.
<p>9. Coverage: definition of insurable protection should be clear in the legal framework, should cover adequately the large majority of depositors to meet the public policy objectives of the system and be internally consistent with other DGS design features.</p>	<ul style="list-style-type: none"> ✓ Coverage is clearly defined in the law and limited. It covers all types of deposits. ✓ Compensation includes accrued interest and is limited to € 100 000 for the deposits in any currency combined with any distribution from the institution's bankruptcy. ✓ At this level eligible deposits amount to around 25 percent of total deposits by amount but close to

	<p>100 percent by number of depositors.</p> <ul style="list-style-type: none"> ✓ Excludes: financial institutions licensed to accept customer funds on account, including foreign companies, those subject to criminal legal proceedings for money laundering (Sections 4–5 of the Act). The law does not explicitly mention insider deposits.
10. Transitioning from a blanket guarantee should be as rapid as country circumstances permit.	<ul style="list-style-type: none"> ✓ No blanket guarantee is in place.
11. DGS should have all funding mechanisms necessary to permit prompt reimbursement. Banks should have primary responsibility for paying insurance costs.	<ul style="list-style-type: none"> ✓ Every institution covered by a guarantee pays an annual fee. ✓ Charges are imposed ex ante and are set at 0.1 percent of total insured deposits (on previous December 31). ✓ In 2008, the stability fund has been set up by the State Support Act with an aim to ensure that in the long run, credit institutions themselves will bear the costs of dealing with financial crises. Authorities are considering options for coordination of the two systems.
Back-up funding should be available.	<ul style="list-style-type: none"> ✓ The system has an unlimited loan backup facility from the SNDO set in the law (Section 15) should the fund’s resources not cover the required payout.
Cost should be borne by banks and enforceable .	<ul style="list-style-type: none"> ✓ Every institution covered by a guarantee pays an annual fee. The fees are invested after the SNDO’s administrative costs for running the system have been deducted. ✓ SNDO may order the institution that failed to fulfill its obligations to take corrective measures (Section 21 of the Act). ✓ If measures are not implemented within a year of the order, the SNDO may decide that the deposit guarantee no longer applies to institution’s deposits (with consent of home country supervisory authorities for the European Economic Area (EEA) banks and after notifying home supervisors of non-EEA banks).
Size of the (ex ante) fund should be defined based on clear and consistent criteria.	<ul style="list-style-type: none"> ✓ There is no target level for the fund. ✓ The accumulated value at the end of 2010 at just over SEK 22 billion or around 2 percent of insured deposits, which is at a lower end in international comparison. Empirical surveys show that most countries have established Funds in the range of 1.25 to 5 percent of insured deposits.⁵¹ The Swedish DGF was relatively

⁵¹ See Hoelscher, David S., Michaela Taylor and Ulrich H. Klueh (2006): “The design and Implementation of Deposit Insurance Systems,” Occasional Paper 251/2006, Washington, D.C.: International Monetary Fund.

	larger before the limit was doubled to 100,000 euro at end-2010 in line with the EU directive.
Risk-adjusted premia should be based on transparent criteria but banks' ranking confidential.	<ul style="list-style-type: none"> ✓ The criteria for setting risk-adjusted fees are set in the law (Sections 12–14 of the Deposit Insurance Act). ✓ Fees can vary between 0.06 percent and 0.14 percent depending on the institution's capital adequacy ratio relative to capital adequacy of other institutions in the system (Section 13 of the Deposit Insurance Act). ✓ Decisions on banks fees can be appealed at the general administrative court.
Sound investment procedures should exist and internal controls be set by governing body	<ul style="list-style-type: none"> ✓ Investment rules are prescribed by the law (Section 15 of the Deposit Insurance act). Bank fees are invested in interest-bearing account in the SNDO or government debt instruments.
12. Public awareness: the public should be informed on an ongoing basis about the benefits and limitations of the DGS.	<ul style="list-style-type: none"> ✓ Members shall provide depositors with all information relevant to the guarantee before a contract is established and during the contract period (Section 11 of the Deposit Insurance Act). ✓ SNDO maintains a website with detailed information in Swedish and English. ✓ There is high degree of transparency about past bank interventions and a manner in which the ailing banks have been resolved.
13. Legal protection for staff's actions taken in good faith.	<ul style="list-style-type: none"> ✓ Specific provisions concerning employee liability are not mentioned in the Deposit Insurance Act. ✓ General provisions on the liability of public administrative authorities and their employees are set out in the Damages Act (1972:207). Public administrative authorities are liable for damages resulting from negligence in carrying out their duties (Chapter 3, Section 2). According to information from authorities, case law has set the threshold for what constitutes negligence in the discharge of administrative duties very high. An authority's incorrect assessments of, e.g., what follows from applicable rules are not enough to incur liability; the incorrect assessment must have been manifestly wrong for liability to arise affording in practice a high degree of protection for actions and omissions in the line of duty.
14. Legal redress should be available against those at fault in a bank failure to deposit insurer or other bodies.	<ul style="list-style-type: none"> ✓ This is not addressed in the Deposit Insurance Act. ✓ The IOSCO assessment noted that the legal and judicial framework apparently does not provide for effective deterrence against a range of crimes in financial markets.

<p>15. Early detection, timely intervention and resolution on the basis of well-defined criteria is available. The determination and recognition of when a bank is or is expected to be in serious financial difficulty should be made early and on the basis of well defined criteria by safety-net participants with the operational independence and power to act.</p>	<ul style="list-style-type: none"> ✓ These are responsibility of the FI. ✓ The SNDO is the bank support agency under the State Support Act in systemic cases. In this capacity it can become involved in restructuring a bank that receives a support. ✓ See Basel Core Principles detailed assessment and comments on operational independence and intervention powers under CP 1 and CP 23.
<p>16. Effective resolution to facilitate prompt, accurate, and equitable reimbursement; minimize resolution costs and market disruptions; maximize asset recoveries, reinforce discipline through legal actions in cases of negligence or other wrongdoings. Authority should exist for effective resolution of banks of all sizes and to help preserve critical banking functions while clearly ensuring that bank shareholders take first losses.</p>	<ul style="list-style-type: none"> ✓ The DGF has no role in bank resolution being only a narrow pay-box and does not have responsibility for restructuring banks or for covering the cost of doing so. ✓ The SNDO is the bank support agency under the State Support Act in systemic cases. In this capacity it can become involved in restructuring a bank that receives state support. ✓ The SNDO is responsible for payment to depositors after a bank has been declared bankrupt by the court. ✓ The bankruptcy, including liquidation of the failed institution's assets, proceeds according to the regular bankruptcy rules and is handled by a court-appointed lawyer. The SNDO acts as a regular claimholder and has no powers to intervene in bankruptcy proceedings. ✓ The FI may determine the manner in which business shall be wound up (Banking and Financing Business Act (2004:297). ✓ Facilitating the acquisition by an appropriate body of the assets and the assumption of the liabilities of a failed bank (to provide depositors with continuous access to their funds and maintaining clearing and settlement activities) is not explicitly dealt with in the law.
<p>17. Reimbursement should be prompt and certain. The deposit insurer should be notified or informed sufficiently in advance of the conditions under which a reimbursement may be required and have access to depositor information in advance.</p>	<ul style="list-style-type: none"> ✓ Compensation shall be disbursed no later than within three months of the date bankruptcy of the financial institution is determined by the court, or unavailability of deposits is determined by the home country authority for a branch of foreign institution (Section 9 of the Deposit Insurance Act). ✓ General administrative court may extend the limit by not more than three months. Additional extensions of not more than three months at a time may be granted twice. (Section 9 of the Deposit Insurance Act). ✓ SNDO aims to repay depositors faster and the new government proposal entails a 20 days limit. This may fall short of the currently discusses EU Directive amendments ✓ Depositor loses his/her right to compensation if (s)he fails to assert claim before losing the right to distribution from the institution's bankruptcy.

	<ul style="list-style-type: none"> ✓ There is no legal obligation for institutions to maintain up-to-date database of insured deposits. This would change if the amendments proposed by the government became effective.
<p>18. Recoveries: the deposit insurer should share in recoveries from the estate of the failed bank. The deposit insurer has at least the same or comparable creditor rights or status as a depositor in the conduct of the estate of the failed bank.</p>	<ul style="list-style-type: none"> ✓ The state is subrogated and intervenes in the depositor's right vis-à-vis the failed institution with a right of precedence over the depositor up to the amount disbursed (Section 19 of the Deposit Insurance Act). ✓ The SNDO is responsible for protecting the state interest. ✓ Recovered money is paid to the DGF. ✓ The same priority holds for a foreign guarantee system that has paid compensation when Swedish institution has been declared bankrupt.