AFME Members’ Briefing Call – Resolution
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Opening remarks
Update on developments on the EU resolution framework
Update on EU developments

Proposal for bank recovery and resolution directive (RRD)
Commission proposal published June 2012
Now being debated in Parliament & Council
Numerous areas of debate ongoing including:
- Resolution financing
- Depositor preference
- Scope of bail-in
- Government stabilisation powers
- The relationship between home and host member states

Parliament & Council votes in March
Adoption before summer (ambitious timetable)
Deadline for transposition 31 December 2014
Discussions on DGS directive to resume shortly
Consulting on resolution framework for institutions other than banks
Cross-border challenges

Further cooperation required between regulators in different jurisdictions consistent with the FSB Key Attributes Joint Bank of England - FDIC paper on resolution

Significant obstacles remain:

- Reports of US authorities instructing firms not to assume regulatory cooperation in resolution plans
- US proposals to require foreign banks to form bank holding companies
- EC letter to Member States challenging regulatory measures that could obstruct the free flow of capital in the single market

Icesave judicial decision validated Iceland’s decision to compensate Icelandic depositors but not depositors in UK and Dutch branches

A case study in non-cooperation?
The Icesave decision and lessons for the EU resolution framework
Icesave: a landmark decision

350,000 depositors in the UK and Netherlands held £6 billion savings in Landsbanki in online bank accounts under the Icesave brand

Peak of competition for online savers using high interest rates 2006 - 2008

Implications for 27 EU Member States:
- Deposit insurance – pre-funded, post-funded or state guaranteed
- Domestic / foreign discrimination
- Home – host cooperation
- Government stabilisation powers

The Economist: “a blow to global banking”

CentralBanking.com: “the surprising judgment throws the participation of small countries in the single banking market into doubt”
Landsbanki collapse October 2008

- **3 October** - UK FSA issued a Supervisory Notice to Landsbanki
  Practical effect was to freeze Icesave accounts
- **6 October** - Icesave website ceased to work, depositors lost access
  Same day Icelandic Parliament adopted Emergency Act providing for creation of new banks
- **7 Oct 2008** - Landsbanki collapsed
  Between **9 and 23 October** - domestic deposits were transferred to good banks
- **27 October** - Iceland triggered the DGS to pay out **foreign** depositors over a 12 month period (which it then failed to do when 98% of its banking sector failed)
Chancellor Darling: “We have a huge problem” (abridged transcript, October 2008)

Darling: Hello, we met a few months ago, weeks ago.
Árni Mathiesen, Minister of Finance: No, we have never met. You met the Minister of Trade.
Darling: All right, sorry.
Mathiesen: No problem.
Darling: As you know, we have a huge problem with Landsbanki, we have a branch here, which has got £4 billion worth of deposits and it has now been shut and I need to know exactly what you are doing in relation to it. Could you explain that to me?
Mathiesen: [we passed emergency legislation just like you . . . ]
Darling: What about the depositors in London branches?
Mathiesen: We have an insurance fund . . . And . . . the government will guarantee it...
Darling: So people will be paid? . . .
Mathiesen: [Ambiguous response]
Darling: Do I understand that you guarantee the deposits of Icelandic depositors?
Mathiesen: Yes.
Darling: But not the branches outside Iceland?
Mathiesen: No . . .
Darling: But is that not in breach of the EEA-treaty?
UK and EU response

UK used the **Anti-Terrorism Act** to freeze Icelandic assets in the UK

UK compensated **all UK depositors** (above £50K limit)

**EFTA Surveillance Authority (ESA)** brought action against Iceland for failing to ensure payment of minimum amount of compensation to UK and Dutch branches in violation of **DGS directive**

- ESA performs **executive role** of the Commission for the **EEA** countries that are a part of the **European Free Trade Association (EFTA)**
- ESA is Brussels-based and it **cooperates closely** with the EC
- The **EC supported** ESA in this action

The **EFTA** Court in Luxembourg is the equivalent for the EEA to the European Court of Justice for the EU

Submissions by Norway, Liechtenstein, UK & Netherlands
The court considered 2 central questions

Was the government required to **guarantee** deposits up to its DGS limit?
Were British and Dutch depositors **discriminated** against?
The court answered “no” to both questions

**State guarantee**

- A Member State is required only to **establish** and **supervise** a scheme
- If it’s underfunded, the Member State is not required to back it up

**Discrimination**

- Iceland **transferred domestic deposits** to a new bank so they never became “unavailable” like the online accounts did (because of the UK FSA’s action)
- *Domestic depositors never “lost access” to their deposits so DGS not triggered for them; foreign depositors did lose access so DGS was triggered for them.*
What was at stake?

UK paid out £3.5 bn, £2.5 bn of which was insured and then stepped into shoes in subrogation to press claim against Iceland.

In the end UK will recover in full from the Landsbanki estate but not the £100 million in interest.

Political context

- Iceland has an £8 bn GDP and population of 320,000
- UK has a £1.5 tn GDP and population of 63 million
- 99% of Iceland banking sector failed
- Court loathed to impose a financial burden where not explicit; substantial infringement on sovereign resources and further complicated by EU state aid rules

DGS is drafted ambiguously

- Preamble and the recitals in the directive state that the cost of financing DGSs must be borne, in principle, by credit institutions
- No explicit state obligation but allows ex-post funding where state can collect later from the industry (does that not imply a state burden?)
3 lessons for EU resolution framework

1. The recast DGS Directive (to occur this year) needs to be crystal clear on whether or not Member States must guarantee their DGSs.

2. Eliminate possibility of disjointed triggers between a DGS and resolution powers: BRR and DGS Directives must be seamlessly connected.

3. The issues raised by Icesave are the very issues that should be addressed in institution-specific cross-border cooperation agreements (COAGs):
   - Numeric information on amounts of exposure
   - Strategy for addressing exposure
   - Levels of deposit insurance and means of funding
   - Update and review annually
   - Agreed processes for regulatory action in home and host countries
   - Familiarity with regulatory counterparts through CMG
Association For Financial Markets in Europe

Question & answer session
The Association for Financial Markets in Europe advocates stable, competitive and sustainable European financial markets that support economic growth and benefit society.

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