

Positions on financial market issues

FPMI

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Putting the Deutsche Bundesbank in sole charge of bank supervision

Transferring all responsibilities for bank supervision to the Deutsche Bundesbank while ensuring the preservation of its independence of operation

The financial crisis revealed the weaknesses of the set-up—a lack of speed and of coordination of operation—of having both BaFin (Germany's Federal Office for the Supervision of Providers of Financial Services) and the Deutsche Bundesbank in charge of bank supervision. A greater speed of action in taking a single set of measures would have led to the quicker and thus more effective detection and solving of the problems besetting banks.

By putting an end to the redundant operations and problems of coordination arising from having two agencies in charge, the putting of the Deutsche Bundesbank in sole charge will greatly increase the efficiency of supervision of Germany's banks. A further advantage will incur from the breadth and depth of the Deutsche Bundesbank's network of central and local offices. These put the Bundesbank in close, on-site touch with financial institutions. This ensures an immediate awareness of banking problems and a commensurate response to such by supervisors.

A final operating advantage of the scheme stems from the Deutsche Bundesbank's being a member of the European Central Bank's Council and of other European and worldwide level bodies charged with supervising financial institutions. These ties enable the Bundesbank to attain an appreciation for the requisites of financial stability and as to how to satisfy them by exercising macroeconomic prudence.

The financing of financial markets supervision

No charging-on financing of costs not associated with supervision

The contract entered into on November 11, 2005 by the parties forming Germany's coalition stipulated that Germany's system of financial market supervision would be subjected to an official audit. This was to have been completed by the end of the legislative period, and was to have involved the system's operating procedures and organization. Modifications were set to ensue. These modifications were then made via the Federal Ministry of Finances' revamping of the so-called "Supervision Directive" and by the promulgation of the Act on Modernizing Structures of Supervision. These measures failed, however, to address an issue of key importance to the institutions being supervised in Germany: the ensuring of a more effective cost-accountancy on the part of BaFin.

The charging-on system of financing supervision has resulted in ever-greater encumbrances for Germany's financial community in the period since the founding of BaFin and since the promulgation of FinDAG (Act on the Supervision of Financial Services Providers) and of FinDAGKostV (Act on the Charging and Apportionment of Costs arising from the Supervision of Financial Services Providers). These ever-greater costs have caused Germany's financial services industry to strongly call for a revamping of the system of financing BaFin's operations.

The industry's proposal foresees the tax authorities' assuming a percentage of the costs of running the system and the instituting of a rule that the institutions being supervised are not to be charged for costs either not associated with this supervision or with those arising from an obligation to indemnify for damages resulting failures to properly perform official duties.

Held in 2007, the conferences of ministers of economic affairs and of finances also resolved to prevent the costs arising from failures to properly perform official duties and from matters not germane to supervision from being charged on to the institutions being supervised.

Principles leading to the more effective regulation of financial markets

Regulations showing a sense of proportion

The financial market crisis revealed the many weaknesses and problems plaguing the regulation of financial markets. In an official statement made on September 25, 2008, Germany's minister of finances pointed out that *"the first step is to implement measures applying to the entire world. The next step is to set up a level playing field in Europe. And the third one is to address the national level."* Over the last two years, this approach has guided the deliberations of G-20, of the Basel Committee on Banking Supervision, and of European and national-level bodies. These deliberations have produced important and far-reaching regulations.

Notwithstanding this, problems remain, as do areas unaddressed by regulations. Despite this, it is highly important that the measures now being planned to remedy these show senses of proportion and prudence. This would be achieved by the strict adherence to the principles and requirements laid down in the EU Commission's White Book on Financial Services Policies (2005-2010) on how to improve the legislative process when enacting regulations. This stipulates that alterations of regulations are only to be considered once comprehensive forecasts of their consequences have been completed. This also means that the quick-fire implementation of regulations has to be refrained from.

To be noted is that regulations revamping or beefing up systems of supervision invariably give rise to considerable encumbrances to both financial market players and, indirectly, to their private and corporate clients. Proposed regulations claim to induce an added value to the supervisory system. In the final analysis, this increase has to be compared to the costs and encumbrances resulting from the change to financial institutions and their customers.

These reasons make it imperative to reject any tampering with properly-functioning markets. This especially applies to the efforts by the EU Commission to regulate the mortgage credit market and/or to establish the principles of responsible lending and borrowing. The consultations carried out have shown that EU-wide regulations could give rise to far-reaching interferences in markets. These would, however, result in no or only slight advantages to consumers.

Policy-makers should be guided by the principle of “better rather than more regulations”. This principle has the following thrusts:

- In accordance with the principles agreed upon at the G-20 level, steps should be undertaken to ensure that all financial market products are supervised, and thus that no unaddressed areas remain.

Encompassed in this is the requirement that all risks—both those carried on balance sheets and those arising from special purpose entities—be made transparent and accountable.

- Establishment of a package of regulation measures meeting a wide variety of needs, and thus avoiding “one size fits all” regulations, as these tend to disproportionately burden small and medium-sized financial institutions.
- Adherence to the principle of conforming to the letter and spirit of EU directives when implementing them on the national level, and thus avoiding any gold plating practices.
- Promulgating of a single set of supervisory regulations on the worldwide and EU levels, and thus avoiding the incurring of distortions of competition.

This implies that the enacting of anticipatory legislation by national-level bodies is to be rejected in those cases in which this has not been coordinated on the worldwide and European-levels. Such legislation gives rise as a rule to encumbrances borne solely by Germany’s financial community and by the supervised financial institutions comprised in it. Also to be striven for is an EU-wide harmonization of reporting requirements. This would lead to a reduction of the paperwork resulting from the requirements faced by Germany’s banks.

- Enacting of regulations strengthening the business community’s principle of accountability. Needed are new regulations for rating agencies and for other players. These regulations would establish liability for ill-founded ratings, and would induce transparency as to models, methods and basic assumptions used in rating procedures.

Regulating short-selling

The regulating of covered short-selling and banning on a lasting basis uncovered short-selling

In response to the financial crisis and in consultation with supervisory bodies in other countries, BaFin issued decrees on September 19 and 21, 2009 banning the uncovered short selling of shares in eleven companies. In December 2008, BaFin extend the term of the ban from the end of the year to March 31, 2009. This was subsequently extended to first May 31, 2009 and then January 31, 2010. BaFin's measures are widely regarded as being steps requisite to ensure the stability of financial markets.

Typically employed by hedge funds, short-selling enables investors to bet on and thus profit from declines in shares. Such practices join with rumor-mongering on markets in allowing such funds to imperil the very existence of a publicly-listed company. Expressing itself in an extreme volatility of share quotes, the public pressures arising from such moves often paralyze corporate management and put their company in play for takeovers. Such scenarios have two key downsides: the losses of jobs and of stability on financial markets. This can greatly impair the freedom of operation of institutional and private investors.

To restrict such abusive manipulations of markets, BaFin's limited-term ban on uncovered short-selling should be turned into an unlimited-term regulation. Doing such requires the implementing of an internationally-coordinated approach. A going-it-alone on the national level would be a measure of last resort. It should be considered as such.

A further move would be improving the regulations assuring the transparency of covered short-selling. This cannot, however, be allowed to produce a further increase in bureaucracy.

Preserving Germany's deposit insurance system

No ad hoc alteration through Europe-wide regulations of Germany's deposit insurance and bank protection systems

One of the first measures undertaken by the European Union to deal with the financial crisis was to promulgate legislation altering the deposit insurance directive. The corresponding implementation in Germany took place on June 30, 2006. It involved the revamping of the Act on Deposit Insurance and Investor Indemnification. The Act stipulates that the minimum amount of deposits legally secured amounts to €50,000. This is set to be increased to €100,000 as of 2011. The Act thus does away with the previous ceiling of €20,000 and with the customer's 10% share of losses suffered. FPMI hails these changes.

In mid-2009, the European Commission opened a consultation procedure on a comprehensive-scope alteration of the deposit insurance directive. The last few months' events have detailed the important role played by insurance deposit systems in assuring financial market stability. With this in mind, we welcome the EU Commission's consultations, as we see them as launching a wide-ranging and all-inclusive discussion of this important subject. A concomitant of this importance is the need to carefully weigh the effects of pursuing such a revamping. Over the previous few decades, Germany's insurance deposit systems have put their stability on ample display.

Germany's credit unions and saving banks have long provided unlimited guarantees of deposits. Virtually the same kind of assurance has been provided by the country's privately-owned banks. These arrangements have provided investors with the highest possible degree of protection. The provision of this protection has, however, to accord to the dictates of cost and risk/benefit and possibility ratios governing the operations of all providers of financial services. FPMI does not see at this time any need for a revamping of the structures of the deposit insurance directive, or for it to include the system securing the operations of the banks and being participated in on a voluntary basis. Banking groups have to be continued to be allowed to maintain, in addition to the minimum standards imposed by legislation, the higher level of protection provided to both depositors and banks and stemming from the tried-and-found-true system. Altering such would give bank customers the counterproductive message that a consequence of the instituting of a single system of deposit insurance for all of Europe would be a lowering of the level of protection, and that this was the result of the consequences of the turbulences gripping the financial markets.

For these reasons, fpmi does not regard the considering of the creation of a pan-European system ensuring a single level of deposit insurance as being yet opportune. Such a move has to be preceded by the conducting of a comprehensive discussion capable of resolving a wide range of highly-complex issues. To be investigated is whether or not such a pan-European system would provide a higher level of protection and stability than currently ensues from national-level systems. Transferring the responsibilities for deposit protection from the national to the supranational level--to, for instance, offices maintained by the Commission--would seem at this point in time to be totally unjustified. Subsidiarity dictates that the powers to allocate funds used by deposit insurance systems and employed to satisfy indemnification claims should be retained by the member countries or by banking groups.

Obligations to render payments to members of a deposit insurance scheme can only arise in those cases in which—at the very least—indirect influence upon the “business policies” of the facility operating the scheme can be exerted (through the ordering of examinations etc.). It is at this moment not possible to postulate a way in which this influence could be guaranteed in a pan-European deposit insurance system.

To be taken into account is the divergence of standards of supervision prevailing in Europe. This divergence obliges the awaiting of developments pertaining to the instituting of a single, pan-Europe structure of supervision. Quick fixes and shooting from the hip are to be avoided in this highly sensitive area.

The above facts and consideration have led fpmi to take a wait-and-see position. We have to first wait and see what the practical effects of the revamped directive, which took effect in March 2009, are. These effects then have to be thoroughly analyzed. The deposit insurance system is an important and highly sensitive component of the relationship of trust existing between banks and their customers. That means that any need for improvement has to be carefully considered as to its efficaciousness, even in those cases in which the harmonization of the various national systems is being pursued.

Augmenting German business' stock of own funds

Increasing the attractiveness of investing in stocks and thus augmenting the international-level viability of Germany's business community

Investing capital in stocks in Germany is subject to tax-disadvantages which have been exacerbated by the introduction of the final withholding tax and from the rescinding of the exemption from taxation of gains from sales (made after the expiry of the speculation period). These moves have caused the taxation levied upon own funds to rise to at least 48.34%. The corresponding figure for outside funds: 28.96%. This means that the parameters for investing in stocks in Germany are considerably more disadvantageous than those in other countries.

It is thus not surprising that making investments in Germany companies' own funds has over the last few years become more and more unattractive. This has negatively impacted upon institutional and private investors, which have experienced an impairment in their range of options of investing in instruments providing long-term private pensions. This lack of attractive investments has also had a negative effect on Germany's business community as a whole. This is because companies require secure sources of financing to operate efficiently and successfully—and to create jobs. Each procurement of financing requires maintaining an adequate stock of own funds. The lack of this translates into one of reserves. And this leads to low ratings. These, in turn, prevent the acquisition of outside capital at advantageous conditions—or at all. Such lacks restrict companies' capabilities to make investments.

Germany's business community thus requires the enacting of regulations fostering the procurement of own funds. Such improvements in the parameters under which the community operates would serve to stabilize capital markets, as it would promote the flow of capital, stemming from investors, into the country's financial system. As such an overall economic benefit and such investments are accompanied by greater risks (arising from falling shares and from insolvency), the making of such investments has to be induced by the enacting of incentives and the removal of today's tax-caused disincentives.

Pursuing the development of consumer protection

Establishment of internationally-coordinated regulations on consumer protection

The crisis caused consumers to lose confidence in the financial system. To restore this confidence, internationally-coordinated measures have to be taken. This coordination will preclude the enactment of measures' lessening the viability of Germany's financial community.

FPMI has taken the following positions on consumer protection:

- Put the commitments made by the G-20 countries at the summits in Washington and London into practice by ensuring the supervision of all financial market products and players.
- Compiled for all investment products have to be cogent and concise and thus easy-to-understand and informative briefings (product information sheet). The regulations setting up such briefings should emulate the Insurance Contract Act, which governs the provision of information about insurance products. Today's (pre-contractual) information requirements are often quite extensive. Their suitability for use by consumers has to be examined.
- The affixing of 'traffic light' rankings to financial products or the conducting of check-ups by third parties do not address either the complexity of financial products or the individual needs of investors. Such practices give rise, furthermore, to issues of liability.
- Well-conceived product information sheets do not suffice to meet consumer needs. Also required are professional and individual-needs consulting services. The consultants supplying these have to have secured qualifications extending to all financial products and meeting a single set of (high) standards. A role model for such a system of expertise provision could be the insurance industry, which has profited from its trade law and its insurance brokerage regulation.
- Applicable in the final analysis are the principles of taking responsibility for one's own actions and of viewing consumers as adults capable of running their own affairs. The only investments yielding absolute security of investment are very conservative, low-yield ones. The provision of briefings on these financial matters to investors has to be stepped up.
- State support (either financial or legislative) of fee-based consultant services is not viewed as being productive. Of key importance is clarity as to whether the consultant is

working on a commission or fee basis. Which option is exercised by investors should be determined by market forces.

Helping SMEs by reducing the costs of corporate pension plans

Categorizing congruently reinsured (group) pension funds as being methods of providing old age benefits not requiring additional security

One way of reducing the costs borne by SMEs (small and medium-sized enterprises) and thus assisting them is lowering the expenses arising from their maintaining corporate pension plans. According to fpmi, a method yielding such would be the classification of congruently reinsured (group) pension funds (Unterstützungskassen) as being a kind of providential scheme not requiring the procurement of additional security. This would put such funds in the same category as direct insurance and pension schemes. This, in turn, would release the companies from the obligation to pay into pension securing unions (PSUs).

To assure their beneficiaries of receiving pensions, the pension funds take out reinsurance. The funds' articles of association and Germany's Corporate Tax Code and Corporate Tax Enabling Regulations stipulate that the reinsurance's assets are to be employed exclusively to pay out benefits to employees. This precludes the pension funds' using their assets to meet corporate needs, with this including their being devoted to satisfy creditors as part of insolvency procedures. Thanks to the 100% rate of reinsurance, its being contractually reinsured, and the special restrictions imposed by Germany's Corporate Tax Code, congruently reinsured pension funds provide the highest possible level of security of pension provision, with this applying to cases in which the employer goes bankrupt. The PSU itself uses the value of the reinsurance policies to finance the obligations assumed by it. The exceptional position of the pension funds was attested to in 2002 by an expert audit. This form of corporate pension plan was then assigned to the class bearing the lowest rate of risk. This obviated the need for insolvency insurance. Today's code still, however, requires employers using a reinsurance-based fund to satisfy their employees' claims for pensions to register these with the PSU and to accordingly pay its annual fees.

The removal of the reinsurance-based (group) corporate pension plans from the insolvency insurance system would constitute a way of reducing the costs borne by Germany's SMEs, and to do so without having to resort to a reallocation of costs. The removal would also enhance the fairness of contribution, and would serve to foster the development of corporate pension plans.

Improving conditions under which private providers of health insurance operate

Assuring the stability of the system of privately-run health insurance

Germany's privately-run health insurance plans (PHIP) form a key component of the country's system of universal health care. This importance mandates the securing of the existence in their current forms of the PHIP. This is to be achieved by improving the parameters governing their operations. FPMI foresees the following measures as yielding this enhancing of viability:

- Rescinding January 1, 2003's unscheduled increasing of the maximum income level applying to the obligation to procure health insurance from public sector providers.
- Canceling the three-year rule (imposing a three year waiting period) upon those wishing to be admitted (readmitted) to a PHIP. This rule was imposed by March 26, 2007's promulgation of the Law on Strengthening Competition in Public-Sector Health Insurance (competition law).
- Revamping the settlement of payments assumed by PHIPs and governed by Germany's Schedules for Fees for Physicians and Dentists so as to account for developments in medical care.
- Assuming of components of payments from public-sector health insurers (for instance: dental work) so as to reduce the insurers' costs and to thus prevent increases in the amounts employees pay into the system.
- Fostering the working relationships existing between private and public-sector insurers in the area of policies providing supplemental medical coverage.

The PHIPs are a major source of the funds financing Germany's health care system. For that reason, Germany's Federal Constitutional Court, in a judgment rendered on June 10, 2009, confirmed that privately-run providers of full-range health insurance constitute a major component of the system, and that they thus enjoy constitutional protection. The expansion of capital-backed insurance will make Germany's health care system better equipped to handle demographic trends. The PHIPs have 8.6 million clients, or nearly 10% of the country's population. To be added to this figure are the 21 million supplemental health care policies taken out with public-sector insurers. These policies cover major risks of illness not handled by public sector providers. The restrictions of admittance placed over the last few years by

reform acts and the accompanying drop in new members notwithstanding, the PHIPs and their full-range coverage remains in strong demand. After allowing for special effects, the number of fully-insured persons being admitted to the PHIPs in 2008 came to nearly 49,000—sharply down (18% and 56%) from 2007 and 2006. To keep the PHIPs in business and to thus ensure that they can continue to play their important role in Germany's health care system in the years to come, the parameters under which they operate—and particularly the preconditions for admittance—have to be improved. A key step would be the repealing of the increasing of the maximum level of income obliging the procurement of health insurance from public plans. Imposed as of January 1, 2003, this regulation has failed to improve the finances of the public-sector providers of health insurance. Another move would be the rescinding of the 3-year period of waiting. This was introduced in conjunction with the competition law (see above).

The schedule of fees for physicians and dentists are obsolete. This mandates a revamping of the fee schedules used in the settlements of payments assumed by private insurers. This revamping has to take into account developments in medical care. To be ascertained is whether or not the introduction of clauses enabling the adding of stipulations to contracts would constitute ways of permitting doctors and PHIPs to conclude, on a voluntary basis, fair and proprietary rules about the quality, amounts and prices of health care.

One way of keeping employee payments into public sector schemes at current levels is, according to fpmi, the greater taking into account of capital-backed components. Thanks to the efficaciousness of their methods of cost-factoring services, the PHIPs are entirely capable of assuming responsibility for categories of payments (for instance, for costs of accident-caused illnesses, dentistry and tooth replacement) from public sector providers.

The competition law enables public health insurers to offer special coverage plans. These in turn offer payment for services not included in the official schedules of coverage. The plans facilitate the entry by the public sector providers into what had been the properly-functioning market for supplemental health care coverage, distorting it in the process. This is due to the public-sector providers' not having to observe (with all of the attendant and negative impact upon consumer protection) the strict rules of cost-factoring applying to PHIPs, to their not having to constitute solvency capital, to their not having to compile capital-backed reserves for demographic trends, and to their having a monopoly of service in certain areas. These facts speak for the rescinding of the right to offer such special coverage plans, and for replacing them with the equipping, via new legislation, of the public and private providers with new and more extensive ways of jointly offering special and supplemental plans.

Adhering to the equivalency principle in the private-sector provision of health insurance and in the obligation to provide service

Making entitlements to services provided by PHIPs premium-driven

The services provided by the PHIPs (Germany's private health insurance plans) have to be returned to being premium-driven. The principle of equivalency between services provided by and premiums paid into the PHIPs has not been adhered to at all. The result is an imbalance. This is to the disadvantage of the insurers and of the community of its policyholders. The factors causing this are Germany's competition promotion law (see above); the basic policies now provided by PHIPS as part of the country's new (as of January 1, 2009) obligation to be health insured; and the regulation stipulating that services palliating acute illnesses, pain, and problems arising during pregnancies and maternal leave have to be provided even in those cases in which premiums have not been paid and in which it is not possible to cancel coverage. This imbalance between services provided and the premiums financing them could well cause the insurers to experience considerable business problems. Exacerbating this situation is the stipulation that the furnishing of proof of the policyholder's requiring financial assistance causes him or her to have a full services entitlement, even in those cases in which no premiums have been paid. A final problem is the stipulation that this need for assistance constitutes grounds for halving the premiums to be paid for the basic coverage. As of June 30, 2009, 9,823 policyholders had taken out this coverage. Of them, 1,151 were registered as being non-payers (11.7 %). The comparable figures for normal coverage plans is, based on premiums owed, estimated to be 2–3 %.

Needed is a return to the principles of the Insurance Contract Act, which foresee the provision of insurance services being gradated to the payment of premiums. Speaking for the reattaining of this capability is the fact that the plans' "social components" assure consumer needs of receiving a commensurate level of societal consideration. Indemnification for expenditures borne by providers of emergency services to PHIP customers not capable of paying premiums is to be supplied by other sources (responsibility of the welfare state).

Initiating the switch to capital backing in the nursing system

Reforming the nursing insurance system

Set up to provide partial coverage, Germany's public sector-stipulated nursing insurance system has repeatedly experienced a lack of coverage of costs of service provision by premiums. The most recent reform of the system introduced a link between premiums and level of costs. This, however, has not sufficed to essentially change the situation, thus mandating the addition of a new financing component to both kinds of nursing insurance—the ones supplied by the social and by the private sectors.

The pay-as-you-go procedure employed by the social nursing care system will prove incapable of meeting the rise in demands for services ensuing from demographic trends. This is not the case in the private system, in which policyholders compile reserves to be employed to defray the costs of nursing arising primarily in old age.

Whether or not the social nursing system can meet the challenges arising from demographic trends depends on the financing method selected. Authorities in this area regard the system's multiphase switching to a capital-backed method modeled upon the one used in the private one as being requisite.

Another possibility would be to replace components of today's social system with the supplemental coverage provided by private insurers. This would facilitate the system's accumulation of capital backing and would serve to stabilize the amounts of premiums paid by policyholders. PHIPs have 14 years of experience in maintaining a capital-backed system. This mandates the insurers' playing an instrumental role in the further development of socially-provided nursing insurance.

This revamping of the system of socially-provided nursing care has to be accompanied by an increase in the amount of participation by Germany's citizens in the financing of the risks of requiring nursing. This is to be achieved by establishing tax incentives (similar to those set up for the country's system of supplemental and capital-backed pensions) stoking public interest in taking out such coverage.