

20 August 2013

*Sent by email to EBA-CP-2013-8@eba.europa.eu*

European Banking Authority  
Tower 42  
25 Old Broad Street  
London EC2N 1HQ  
United Kingdom

**EBA Consultation Paper on Draft Regulatory Technical Standards on the assessment of recovery plans (EBA/CP/2013/08)**

Dear Sir / Madam

Please find enclosed AFME's response to the Consultation Paper on Draft Regulatory Technical Standards on the assessment of recovery plans (EBA/CP/2013/08). Should you have any questions or desire additional information, please do not hesitate to contact us.

Yours faithfully



Oliver Moullin  
Director, Resolution and Crisis Management  
AFME

**Association for Financial Markets in Europe**

[www.afme.eu](http://www.afme.eu)

London Office: St. Michael's House, 1 George Yard, London, EC3V 9DH T: +44 (0)20 7743 9300 F: +44 (0)20 7743 9301  
Brussels Office: Square de Meeus 38 - 40, 1000 Brussels, Belgium T: +32 (0)2 401 8724 F: +32(2) 401 6868  
Company Registration No: 6996678 Registered Office: St. Michael's House, 1 George Yard London EC3V 9DH

---

## Consultation response

### **EBA Consultation Paper on Draft Regulatory Technical Standards on the assessment of recovery plans (EBA/CP/2013/08)**

20 August 2013

---

The Association for Financial Markets in Europe (AFME) welcomes the opportunity to comment on the European Banking Authority (EBA) Consultation Paper (CP) on Draft Regulatory Technical Standards on the assessment of recovery plans under the draft directive establishing a framework for the recovery and resolution of credit institutions and investment firms.

AFME represents a broad array of European and global participants in the wholesale financial markets. Its members comprise pan-EU and global banks as well as key regional banks, brokers, law firms, investors and other financial market participants. We advocate stable, competitive, sustainable European financial markets that support economic growth and benefit society. Its pan-European membership allows AFME to draw upon the expertise, diversity of business models, cultures and experiences found within its member firms.<sup>1</sup>

AFME has been strongly active on resolution issues for a number of years and has played a leading role in the industry efforts, at European and global level, aimed at achieving effective and credible recovery and resolution frameworks.

We set out below our high-level response to the consultation, which is followed by answers to the specific questions raised.

#### **Executive summary and general comments**

AFME is broadly supportive of the scope of the draft RTS on the assessment of recovery plans. We have the following general comments in response to the CP:

- We are supportive of the three proposed elements of assessment criteria being completeness, quality and credibility.
- While the level of application of recovery plans to groups on a group and/or individual basis will be dealt with in the level 1 text, the RTS should make it clear that the level of application of recovery plans is not affected by the RTS and where appropriate any “individual” plans may form a part of the group recovery plan.

---

<sup>1</sup> AFME is the European member of the Global Financial Markets Association (GFMA) a global alliance with the Securities Industry and Financial Markets Association (SIFMA) in the US, and the Asia Securities Industry and Financial Markets Association (ASIFMA) in Asia. AFME is listed on the EU Register of Interest Representatives, registration number 65110063986-76.

- It should be recognised, perhaps in a recital, that the overall assessment of the recovery plan should consider whether the plan is viable and can be implemented by the firm concerned rather than as a standalone document for any other purpose.
- The EBA could usefully provide guidance as to how assessment of recovery plans for cross-border groups should be conducted between different competent authorities to ensure coordination of assessment between authorities. While we appreciate that some of this will depend upon the level 1 text, greater emphasis on coordination and cooperation amongst authorities when assessing recovery plans would be welcomed.
- Too much focus has been put on scenario testing of recovery plans rather than a holistic assessment of the adequacy of the recovery plan to enable the group to recover from a wide range of potential situations. Scenario testing can form one element of this, but it should not be the main determinant of assessment.

## Questions

### **Q01. If your recovery plan has already been assessed by a competent authority, what are your general comments to this RTS on the basis of your experience? In particular, which elements do you suggest to add to the assessment criteria specified in this RTS?**

Many of AFME's members have produced recovery plans which have been assessed by the relevant authorities. Based on this experience, the approach to assessment appears to have been broadly consistent with the proposed RTS. Some members have advised that from their experience to date, less emphasis has been placed on testing recovery plans against scenarios and more emphasis has been placed on the over-arching need for recovery plans to be sufficiently flexible to adapt to a wide range of situations.

We are supportive of the three elements of the assessment criteria being completeness, quality and credibility. We agree that these elements should be assessed as part of the assessment of recovery plans.

As we raised in our response to the consultation paper on the draft RTS on the content of recovery plans, it is necessary to avoid any perception that indicators should form triggers for particular recovery measures being taken. We are concerned that the reference to determining "which specific recovery option it may need to apply" in the definition of "indicators" could be read as a requirement to link specific recovery options to specific situations.

### **Q02. Do you think that the elements which shall be subject to assessment according to [Article 3] are comprehensive? Do you think that some of the elements should be amended? Do you think that some additional elements should be added?**

The criteria relating to the completeness of recovery plans in Article 3 are sufficiently comprehensive. However, it should be clarified in Article 3(2)(b) that there is no mandatory requirement for intra-group financial support agreements under the directive. Therefore, Article 3(2)(b) should start "any arrangements for possible intra-group financial support..." to ensure consistency with the level 1 text.

The RTS should also emphasise that recovery plans should only be required to contain information that is relevant. Requirements to include information that is irrelevant to the

recovery plan will make plans less useful and this principle should be reflected in the requirements for the assessment of completeness of recovery plans. A recovery plan should not be assessed as inadequate solely on the grounds that it does not contain information that is not relevant to the plan. For example, as raised in our response to the EBA's consultation on the draft RTS on the content of recovery plans, information which is not relevant to recovery plans but which is more relevant to resolution planning should not be required to be included in recovery plans.

**Q03. Do you think that the elements which shall be subject to assessment according to [Article 4] are comprehensive? Do you think that some of the elements should be amended? Do you think that some additional elements should be added?**

Yes, the elements under Article 4 are comprehensive and we are supportive in particular of Article 4(b). However, in relation to Article 4(c)(ii), we do not agree with the inclusion of a requirement that the recovery plan does not omit any relevant recovery options or potential indicators. Recovery plans are not required to cover every possible recovery option. There could also be some confusion regarding the distinction between the "completeness" of recovery plans (dealt with in Article 3) and the "comprehensiveness" required by Article 4(c), which could benefit from clarification.

We also note the reference in Article 4(a)(iii) to the explanation of valuations in recovery plans. Rather than attempting to value potential disposals in a recovery plan, we believe that it is more appropriate for the recovery plan to identify the process that would be used to implement a disposal. Therefore the assessment criteria should focus on this aspect.

**Q04. Do you think that the elements which shall be subject to assessment according to [Article 5] are comprehensive? Do you think that some of the elements should be amended? Do you think that some additional elements should be added?**

We agree that the elements in Article 5 are comprehensive. However, rather than focus on whether the recovery options address specific scenarios identified, as required by Article 5(1)(c), the credibility of recovery plans would be better assessed by evaluation of the range and variety of recovery options which would enable the firm to recover from a variety of causes of financial distress. Recovery plans need to be flexible to deal with a wide range of situations rather than specific scenarios. A recovery option should not be dismissed, or lead to the recovery plan not being assessed as credible solely because that option does not address a specific scenario. Accordingly we suggest that Article 5(1)(c) is deleted as it suggests that recovery plans should be driven by addressing specific scenarios rather than establishing a range of recovery options that could deal with a wide range of scenarios.

In particular, as firms do not have access to the recovery plans of other financial institutions, it is not possible for their recovery plans to take into account the impact of other firms implementing their own recovery plans. While this is also a concern in the level 1 text, it also raises questions as to how authorities can appropriately assess this requirement. Article 5(2), in particular 5(2)(c) needs to reflect this. Again a recovery option should not be dismissed, or lead to the recovery plan not being assessed as credible solely because it an option might not be effective in the event that other firms implemented their own recovery plans. The focus would be better placed on ensuring a sufficiently broad range and variety of recovery options are included and that plans are flexible to adapt to a range of situations.

We agree that the plausibility of recovery options should take into account whether it is likely to maintain the viability of the institution or group. However, the requirement in Article 5(1)(b)(iv) for the option to “achieve the lasting restoration of its financial soundness” goes beyond what is required when assessing whether an option is plausible.

When assessing the level of an institution’s preparedness, as required by Article 5(1)(e), it should be clarified that the extent of the preparatory measures required to be taken (as opposed to identified/planned) will depend upon the nature of the particular recovery measure in question.

Finally, the requirements for the assessment of the adequacy of the testing of recovery options in Article 5(1)(g) and (h) overlap and could be combined.

**Q05. Could you describe what key elements the competent authority should assess when reviewing the matters stipulated in Article 5(3) letters a) to d)?**

We are broadly supportive of the criteria as set out in Article 5(3).

**Q06. Do you agree with our analysis of the impact of the proposals in this CP? If not, can you provide any evidence or data that would explain why you disagree or might further inform our analysis of the likely impact of the proposals?**

We have no comments on the impact analysis, although we would be interested to understand why there were such divergences in the expected costs between different national supervisory authorities.