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**Consultative Document: "Draft Regulatory Technical Standards on the content of recovery plans under the draft directive establishing a framework for the recovery and resolution of credit institutions and investment firms"**

Ladies, Gentlemen,


The European Association of Co-operative Banks (EACB) welcomes the opportunity to comment on the EBA consultative document *"Draft Regulatory Technical Standards on the content of recovery plans under the draft directive establishing a framework for the recovery and resolution of credit institutions and investment firms"*.

Please find our general remarks and responses to the specific questions in the following pages.

We will remain at your disposal for any requests for information and clarifications,

Yours sincerely,

  
Hervé Guider  
General Manager

  
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Head of Legal Department



*European Association of Co-operative Banks  
Groupement Européen des Banques Coopératives  
Europäische Vereinigung der Genossenschaftsbanken*

Brussels, 11 June 2013

**EACB position paper on EBA draft RTS on the content of recovery plans**

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*The voice of 3.800 local and retail banks, 55 million members, 216 million customers*

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## A. GENERAL REMARKS

EACB appreciates EBA's efforts in trying to define the minimum requirements with regard to the content of recovery plans under the draft directive establishing a framework for the recovery and resolution of credit institutions and investment firms. In addition, EACB also thanks EBA for the opportunity to participate in the related hearing on 30 April.

### **Draft standard issued earlier than the final level 1 text**

We have serious concerns about developing RTS at such an early stage before there is a finalised legal framework. There are important aspects of the on-going discussions in European Parliament and the Council that have to be taken into consideration:

- The position which the Committee of Economic and Monetary Affairs (ECON) approved on 20 June 2013 as well as the latest compromise texts of the Council contains simplified obligations for smaller institutions.
- The Council text contains a waiver for institutes which can be solved in normal insolvency proceedings without significant negative impacts especially on financial markets or other institutions due to its size, business model etc.
- Additionally, the ECON text under Article 5 (1a) allows institutional protection schemes to draw up and maintain the recovery plans. These aspects are expected to become important points of discussion in the trialog and are also essential for complying with the principle of proportionality.

### **No overlaps**

The current standard should be drafted in such a way as to not duplicate the requirements that will be developed under the resolution part of the crisis management directive. There should be no overlap.

### **Proportionality**

In general, the proposed requirements are, in many respects, fit for a systemically important institution. With regard to smaller institutions, that develop their activities locally and hardly pose any systemic risk, some of the provisions seem excessive. We understand that the basis idea of minimum requirements can be understood as having an endogenous proportionality. However, depending on how burdensome certain provisions are, more flexibility is needed, otherwise there will be little space to make use of the principle of proportionality. Therefore, there should be more room for calibrating plans according to the systemic relevance of an institution. For this purpose, the proportionality principle of recital 4 should rather be included in Article 1, which should be redrafted as follows (bold formatting suggests addition of text“:

*"This Regulation specifies the ~~minimum~~ **maximum** information to be contained in a recovery plan. **With regard to the risk, size and interconnectedness of an institution or group, competent authorities may allow derogations for certain elements in articles 5, 6 and 8.**"*



If Art. 1 would make use of the wording “minimum information”, there will be no scope for an application of the principle of proportionality.

- **Institutional Protection Schemes**

The EBA should take into consideration the co-operative specific organization in form of an Institutional Protection Scheme (IPS). The standards should make a reference to the IPS as this structure is charged with ensuring the solvency and liquidity of the network and it steps in before a bank would reach the recovery stage. As also supported by the EP in Article 5 (1a) of the directive on bank recovery and resolution, the EBA should also set out the measures to be taken by the protection scheme to restore the institutions’ financial situation in the event of its significant deterioration.

### **Confidentiality**

Specific governance structures to ensure confidentiality at the level of authorities and colleges should be put in place. Only a limited number of persons should have access to the recovery plans. As they might contain sensible information, recovery plans need to be carefully handled.

## **B. ANSWERS TO SPECIFIC QUESTIONS**

**Question 1:**

***Have you already drafted/approved a recovery plan or are you in the process of doing so? Is your recovery plan in line with the contents of the draft RTS?***

The larger EACB members have already drafted or are in the process of drafting recovery plans. These seem to be broadly in line with the EBA draft RTS. Nevertheless, in order to demonstrate full compliance with the draft RTS extra work will be necessary for adapting the recovery plan and further elaborating on several aspects.

**Question 2:**

***Do you believe that the draft RTS on recovery plans is comprehensive and contains sufficient and relevant requirements to enable a timely and effective recovery of an institution in the event of financial distress?***

EACB believes that the draft RTS on recovery plans require too extensive information with regard to some aspects. In particular, some of the information required is rather sensitive and detailed and has more to do with resolution than recovery. The level of information requested for recovery planning should be proportionate to the fact that in recovery banks’ management remains in control.

With regard to smaller banks, and taking into consideration a possible drafting of a recovery plan, we believe that the draft RTS should make a reference to the Institutional Protection Schemes. According to article 108(7) of CRR, these arrangements are intended to ensure the solvency and liquidity of the network and use complex and structures and procedures. These arrangements will lead to the central institution of a



network stepping in before a bank would reach the recovery stage. In this case, developing a recovery plan would be superfluous. Moreover, a recovery plan would hardly ever be used. For example, in the case of the German IPS, over the last 80 years there have been no failures of co-operative banks. It becomes, thus highly relevant to acknowledge and mention the IPS in the text of the draft standard on recovery plans.

**Question 3:**

**Please provide your views on the indicators and escalation process as stipulated in the draft RTS under Articles 2(2)(a) and 5(c), and on the other governance arrangements provided for by Article 5.**

EACB appreciates that there is no automatic triggering of the recovery measures, but rather that there is an escalation process in decision making. Furthermore, we welcome the change from "triggers" to "indicators" which are indeed more appropriate. There cannot be any automatic or pre-determined implementation of recovery actions, as it is impossible to predict exactly the conditions that will materialize. The flexibility for management to take actions in specific circumstances should be preserved. This should be clearly mentioned in the EBA standards.

Moreover, we believe that the escalation process should be based on quantitative and qualitative assessments. This would give the necessary flexibility and should be reflected in the RTS.

We would furthermore welcome clarification about the way the CRR/CRD4 additional buffers (e.g. the capital conservation buffer and the countercyclical buffer) would be considered in the escalation process. As their names indicate, the very purpose of these ratios is to provide where relevant an additional buffer to absorb losses when needed in the regular course of business, in addition to the minimum capital requirements (i.e. core equity, Tier and Tier 2). Moreover, some buffers may be set by supervisory authorities at levels which differ over time. This is why we believe that an institution should not be considered in need of recovery when it is operating within the flexibility provided by the additional buffers.

With respect to the definition of "material entities" contained in Article 2(c) of the draft RTS, it should be made clear that this definition is only meant to be relevant for the purposes of the RTS on the content of recovery plans. It should be made clear that the definitions provided in Article 2 of these draft RTS have no impact, reach and/or prejudice on similarly worded definitions used for other regulatory contexts, such as ICAAP, for example.

Moreover, it should be made clear that performing a key commercial activity should not necessarily lead an entity to be defined as material. This is particularly true, if the size of the respective entity is negligible in relation to the group, if the risk profile of the group is not materially affected by a potential failure of the entity and if the entity does not hold a significant market share in its country of residence.

Article 5(a)(1) and Article 5(c)(1) (a) specify that the "identification of natural persons" should be included. However, we have concerns about the identification of natural persons (i.e. name and other personal details) who have been and/or are involved in recovery planning. The identification of natural persons is not necessary for achieving



proper governance. In fact, for recovery planning purposes, the role and function of natural persons who are to be involved are the only relevant information. We, therefore, propose that the draft provisions be modified so that no personal details of natural persons, but only their role and function, are disclosed.

Finally, we don't think that the recovery plan needs to be reviewed by an external auditor. It describes possible strategic options and cannot be audited similarly to financial statements or budgets. Moreover, it is the role of the authorities to check and make judgements on the recovery plans.

**Question 4:**

***Please provide your views on the relationship between the governance arrangements provided for by Article 5 and current risk management processes/governance arrangements such as the Internal Capital Adequacy Assessment Process (ICAAP) and the Internal Liquidity Adequacy Assessment Process (ILAAP).***

There are natural, strong links between the governance of recovery plans and current risk management processes/governance arrangements. However, it must be kept in mind that RRP refer to exceptional and extreme shocks while ICAAP and ILAAP relate to day-to-day prudential management.

Nevertheless, there are requirements that are already addressed by existing systems, in particular the contingency plan for the management information system. The RTS should avoid redundant arrangements and should rather make reference to existing processes.

As mentioned in the answer to the above question, the definition of "material entities" should have no impact, reach and/or prejudice on similarly worded definitions used for other regulatory contexts, such as ICAAP, for example.

We strongly advocate that the governance arrangements provided for by Article 5 of the RTS should not prejudice any organisational structure of a credit institution beyond the scope of recovery planning. In fact, the tasks related and connected to recovery planning are not identical with risk management in a strict sense. They concern, inter alia, strategic issues in a broader sense. Recovery planning should not be mandatorily and/or automatically classified as an extension of the risk management function.

**Question 5:**

***Please provide your views on the requirements for the description of the institution or group, as stipulated by the strategic analysis in the draft RTS under Article 6 (3).***

The requirement for a strategic analysis should be carefully aligned with the requirements for a resolution plan. Especially the requirements that elaborate on the legal structure, critical activities and operational interconnectedness are highly overlapping with the requirements for a resolution plan. In addition, some of the information required is rather sensitive. As also mentioned in the answer to question 2, the level of information requested for recovery planning should be proportionate to the fact that in recovery banks' management remains in control. Therefore, we believe that recital 8 and article 6(3) should be trimmed down. In fact, the required description is almost identical to the description required for the resolution plan in the Annex B of the



Draft RRD proposal. Therefore, this is a redundant description of the group for a recovery plan.

The requirement to identify the “critical functions” of institutions (as per Article 6(1)) is too demanding in many cases. In particular, in a cross-border context, it would have to be supported by analyses delivered by macro-prudential supervisors. For example, the degree of substitutability of an institution’s business lines reflects the institution’s role in the market infrastructure. For determining such a degree of substitutability supervisory assessment or support would appear appropriate. More detailed guidelines and/or examples for identifying “critical functions” are necessary for smaller banks to make the process of such identification less costly.

The “mapping” of core and systemically important business lines called for under Article 6(3)(b) should only be required for entities bigger than a certain size, to avoid superfluously overloading the recovery plan.

With regard to the “external connectedness” referred to in Article 3(b), it should be noted that what is genuinely necessary is not a “description”, but rather the identification of contagion risks. Determining how contagion risks spread within the financial system is likely to go beyond the scope of a recovery plan. For instance, direct contagion effects resulting from interbank loans or credit default insurance are difficult to assess. We doubt that a description of the main counterparties on the assets side and liabilities side of an institution/group would be helpful, given that these counterparties are constantly changing and that the possible recovery plans are updated at least on an annual basis.

Moreover, in the case of small banks belonging to IPS, that are active locally and only perform the traditional banking activities, a detailed description as suggested in article 6(3) might not be entirely relevant, in particular the differentiation between core and non-core business lines and critical functions.

**Question 6:**

**Please provide your views on the requirements for the recovery options, as stipulated by the strategic analysis in the draft RTS under Article 6 (4). Does this requirement comprehensively and adequately capture the different categories of recovery options that could be considered?**

Data requirements seem excessive, in particular for smaller institutions. It is important to simplify the provisions as the standards are defined as minimum requirement standards.

The feasibility assessment is very detailed, especially in the case of assessing the impact on external parties and taking into consideration their actions. This seems aimed only at systemically important institutions rather than a minimum requirement. It is not necessary to assess quantitatively the impact of each of the options but rather show that the recovery options are workable and do not endanger the rest of the group. We are thus in favour of a significant simplification of article 6(5)(b) and article 6(5)(c).

The need for a contingency planning for each recovery option maybe superfluous as the interest of the institution will be to maintain access to financial market infrastructures and continuous functioning of the operational processes.

Recital 9 of the RTS requires banks to test recovery options against specific scenarios. Given that the relevant economic environment in a recovery situation is difficult or virtually impossible to predict, we would see more benefit if generic scenarios were



analysed and tested instead of specific scenarios. Generic scenarios would also be more consistent with the definition of “indicators” in Article 2(a), which requires banks to reassess and determine the reaction to the actual situation.

We agree that banks have to identify a large number of credible recovery options, so as to be able to respond to different types of crisis (idiosyncratic vs. systemic; affecting retail business vs. investment banking; immediate shock or more protracted shock...), and on the other hand to assess what kinds of scenarios seem most realistic in the current environment. However, all the recovery options should not be linked to, and tested on, all the scenarios. This will lead to a huge number of potential combinations some of which will be of little value.

With regard to the “assessment of the effectiveness of recovery options” called for under Article 6(5)(d), institutions can only provide a general description for identified recovery options in relation to crisis-sensitive parameters mainly (such as capital ratios, risk-bearing capacity, liquidity and earnings) both in the current scenario and in a stress scenario. However, the market and competition conditions (in particular when it comes to implement the planned sale of an investment) are uncertain. It is thus impossible to predict, in advance, anything definite about the feasibility of identified recovery options under the scenario that will materialize.

**Question 7:**

***Please provide your views on the requirements for the communication plan, as stipulated in the draft RTS under Article 7.***

We support the requirement to include a global detailed communication and disclosure plan. However, it is not necessary to include a communication and disclosure plan for each recovery option. In particular, a detailed plan as suggested in Article 7 (1) is excessive. Furthermore, in practice, it is generally accepted that the early stages of recovery of an institution work best “behind closed doors” with the participation of the biggest creditors. Therefore, it is not desirable to communicate to the public at that stage. Communication to the public should only take place later in a recovery phase. Any communication ex ante must be excluded.

Therefore, Article 7 (1) should be deleted and Article 7 (2), should be limited to the definition of internal communication processes that that is essential for the effective implementation of remedial measures (communication only to staff involved in recovery processes and not the entire workforce).

The unintended communication of parts of the recovery plan to the public could have a very detrimental impact on the bank. Access to the recovery plans has to be restricted - only few people, bound by professional confidentiality requirements, should have access to the plan.

**Question 8:**

***Please provide your views on the requirements for preparatory measures, as stipulated in the draft RTS under Article 8, providing in particular your views on the question what types of preparatory arrangements or measures could or should be taken into account in the analysis of the recovery plan.***





In general, we agree with the requirement for preparatory measures. However, this should not imply a script with detailed steps that will lead to the sale of assets, business lines or daughter companies, which are rather resolution measures and therefore part of the resolution plan. Therefore we propose to add at least the phrase “*high level*” in the introductory part Article 8: “A recovery plan shall include a **high level** analysis of:”

**Question 9:**

**Do you agree that some of the costs of preparing recovery plan are already incurred by the requirements of having a proper risk management framework?**

It is certainly true that recovery plans should be part of a sound risk management framework for banks with a certain size. They generally provide a valuable benefit to banks, protecting shareholder interests by ensuring business continuity in times of serious financial distress. Nevertheless, we remind that recovery plans and risk management framework pursue different objectives – preparing for a crisis scenario vs. day-to-day business management.

However, the most important cost driver is the level of detail of the different components of the recovery plan. The impact assessment of individual recovery options, in particular, is very resource intensive. This process requires a significant number of assumptions regarding a potential crisis scenario. However, these assumptions can be reasonably expected to differ from the crisis event that will finally materialize. Thus, we see a potential risk to massively increasing the costs without such efforts resulting in proportionate benefits.

**Question 10:**

**Could you indicate whether all the main drivers of costs and benefits have been identified? Are there any other costs or benefits missing? If yes, could you specify which ones?**

There are additional costs that haven't been identified in the consultation paper. Most importantly, an additional layer of formality is added by the official recovery plan (as compared to requesting banks to only have internally used guidelines and directives). Properly maintaining all data and information updated in line with the extensive formal requirements implies costly procedures and might also require external assistance. Moreover, an increased effort is expected for important business decisions (such as reorganizations, asset sales, mergers etc.) which already imply very complex procedures. This effort is the result of the necessary analysis and documenting the recoverability and resolvability of such projects.

In addition, supplementary efforts are expected in the case of internationally active banks:

- an alignment of efforts between recovery plans and measures requested by different supervisors (on group level and local level)
- a massive involvement of the various supervisors in general, particularly with regard to conflicting supervisory interests or with regard to alignment of supervisory expectations with feasibility assessments of the banks.



**Question 11:**

***Do you agree that, for an institution, the costs of producing a recovery plan are likely to be proportional to the size/complexity of the firm and so of the costs its failure may create? If not, could you explain why?***

The basic idea of minimum requirements can be understood as implying endogenous proportionality. However, due to the very detailed requirements this proportionality is very limited. Moreover, some of the requirements are too detailed and seem rather aimed at systemically important institutions. In particular, for small banks, the costs of producing a plan that would comply to all the requirements are disproportionate to the impact of the failure of such banks.

Depending on how burdensome certain provisions are, more flexibility is needed, otherwise there will be little space to make use of the principle of proportionality. We, therefore, believe that there should be more room for calibrating plans according to the systemic relevance of an institution. For this purpose, the proportionality principle of recital 4 should rather be included in Article 1, which should be redrafted as follows (bold formatting suggests addition of text):

*"This Regulation specifies the ~~minimum~~ **maximum** information to be contained in a recovery plan. **With regard to the risk, size and interconnectedness of an institution or group, competent authorities may allow derogations for certain elements in articles 5, 6 and 8.**"*

Moreover, we suggest making a reference to IPS in the text of the standards. The banks in an IPS are most commonly only active locally or regionally, are small and pose little significant systemic risks. As mentioned in the answer to question number 2, they are fulfilling the role of ensuring the solvency and liquidity of the network and step in before the recovery phase. They prove to have been efficient for a long time and in this way make the requirements for a recovery plan less relevant.

**Question 12:**

***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 impacts of the proposals?***

Even in the case of countries that already require recovery plans, the most important cost driver is the level of detail for different components of the proposed EBA rules on recovery plan. As mentioned in the answer to question 9, we are concerned about increasing the costs without such efforts resulting in a proportionate benefit