

Launched in 1960, the European Banking Federation is the voice of the European banking sector from the European Union and European Free Trade Association countries. The EBF represents the interests of some 4,500 banks, large and small, wholesale and retail, local and cross-border financial institutions. Together, these banks account for over 80% of the total assets and deposits and some 80% of all bank loans in the EU alone.

EBF Draft Response to EBA consultation on draft regulatory technical standards (RTS) on the content of Recovery Plans

General Remarks

The EBF supports the concept of Recovery and Resolution Plans (RRPs) and in general believes that the RTS provides a useful framework to support the planning process and is consistent with approaches set out by global standard setters and national authorities. Introducing such a RTS will help achieve consistency in authorities' analysis of RRP, although there is a risk that a detailed level of prescription may risk constraining full and comprehensive consideration of recovery measures and scenario planning. Supervisory dialogue and challenge should reduce this possibility.

The EBF would like to raise the following key messages:

Integrated approach for consolidated banking groups

For consolidated banking groups, individual or local Recovery Plans are completely integrated into the global/group Recovery Plan in dedicated chapters. Requiring separate Recovery Plans at the entity level for consolidated banking groups is contrary to their centralised capital and liquidity management and we are therefore opposed to this proposition. Globally active banks take advantage of optimal pricing and distribution of investments across borders. Initiatives designed to protect local jurisdictions risk creating trapped pools of capital and liquidity which impair the group wide operational model for internationally active banks. It is of the utmost importance that the recovery and resolution planning shall mirror the organisational structure of a banking group. It is important that the RRP requirements do not jeopardise regional financial stability, and eliminate the benefits from having diversified financial organisations.

In this regard we caution regulators that if they force banking groups to restructure their operating model to be resolvable under a Multiple Point of Entry (MPE) resolution strategy (i.e. require that centrally managed groups split up into individually operating entities) it will be impossible to maintain recovery planning at the consolidated Group level. The EBF therefore demands that there are suitably rigorous processes before a supervisor can demand changes to the group structure and that supervisors carefully consider the implications of structural changes for the recovery plan.

The importance of confidentiality

Information contained in RRP will be highly commercially sensitive for the financial institution and potentially provide a “take-over blueprint.” It must be absolutely clear that the information in a Recovery Plan is confidential and strictly only accessible to the firm and authorities within its core college of supervisors and resolution college. Special care needs to be taken with regard to the flow of information across borders. The EBF would welcome guidelines for supervisors on how to handle confidential information across borders.

Clear separation between Recovery and Resolution

In many instances we consider that the scope of the required information has more to do with the resolution plan than with the Recovery Plan. The level of information requested for recovery planning should be proportionate to the fact that in recovery a banks’ management remains in control. As requested by the FSB in its Key Attributes’ appendixes, sensitive and detailed information should therefore be provided in the framework of resolution planning, not recovery.

Having to identify the systemically significant functions is therefore not relevant in a Recovery Plan, and should be left for the resolution plan.

Scenarios and recovery measures

There cannot be any automatic or pre-determined implementation of recovery actions. Firstly, it is impossible to predict exactly the scenario that will materialise; secondly, linking, for instance, five or ten scenarios to more than ten recovery options would lead to a very huge number of potential combinations, which would be both futile and costly to formalise; thirdly, automatic triggers of recovery measures would hinder the flexibility of the bank’s management which need to be preserved.

In our view, the best approach to recovery planning is on the one hand 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 it is not about linking the two parts.

Level of detail

The level of detail in the RTS is very high. It should be more principles-based. The Recovery Plan is primarily designed to be operationally functional for the institution as the management retains control of the undertaking in a recovery phase. A Recovery Plan must therefore be flexible and should not stipulate in advance and in too much detail which measures to take in a given situation. If the plan is initiated the individual options may be elaborated on in more detail depending on the specific situation.

Proportionality

The RTS does not fully respect the proportionality stated in the directive. Small institutions should not be obliged to draw up very large Recovery Plans. In this context, it is not clear whether the draft RTS covers Recovery Plans that are subject to simplified obligations as described in Article 4 of the Bank Recovery and Resolution Directive.

Associated costs

The Recovery Plans should be designed in a prudent and flexible manner, in order to minimise the potential costs. It should be guaranteed that in terms of costs, those limits are not reached.

Implementation

The implementation period should take into account the complexity related to the requirements. We estimate the need of a two year implementation period after the final approval of the Bank Recovery and Resolution Directive.

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Related documents: <http://www.eba.europa.eu/News--Communications/Year/2013/EBA-consults-on-technical-standards-for-recovery-p.aspx>

Response to Discussion Questions:

Q.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?

Many EU jurisdictions have already put in place minimum requirements for the design of Recovery Plans. Many Recovery Plans have already been drafted, validated and submitted to supervisors and Crisis Management Groups while others are still in the course to develop and present these by the end of the year.

However, in many cases the draft RTS are far more detailed than these local requirements.

Q.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?

EBF Members find the required level of information overly comprehensive for recovery planning.

A Recovery Plan should outline the strategic measures that the management of the institution may apply if the financial soundness is potentially impaired, and detail how the necessary information is secured to ensure a timely execution of the plan. The institution management should be responsible for drawing up and implementing a Recovery Plan. It is therefore important that the dimension and the requirements take into account that the Recovery Plan is primarily designed to be operationally functional for the institution as the management retains control of the undertaking in a recovery phase. A Recovery Plan must therefore be flexible and should not stipulate in advance which measures to take in a given situation. If the plan is initiated the individual options may be elaborated on in more detail depending on the specific situation.

We also believe stress testing as a practical way to assess feasibility of recovery options to be illusive taking into consideration the highly uncertain environment the institution might face in a situation of aggravated severity. It would be helpful however to further consider the relationship between the recovery plan scenarios and other stress tests: if banks are required to specify the

impact on capital, for example, of each scenario, how does that relate to the ICAAP regime and capital stress testing?

Article 1 specifies the minimum information to be contained in an individual Recovery Plan or a group Recovery Plan. The draft directive stipulates simplified obligations for certain institutions. Article 1, as mentioned above, specifies a minimum level of information disregarding the proportionality stated in the directive. In case of small institutions it should be sufficient to draw a plan on a more general basis as an extension of the ICCAP.

The Recovery Plan should mirror the organisational structure of a bank. For a centralised consolidated banking group it is important to keep a group wide approach in a business as usual situation where there is a need for a robust and comprehensive management, adequate internal control mechanisms and processes to identify, manage, monitor and report the risks the group is or might be exposed to, and in situations where recovery is applicable. The consequence of single entity Recovery Plans for the consolidated groups will put at risk the overall objectives with the directive to enabling fast and decisive recovery actions, minimising the likelihood of a cross border bank failure.

With regard to paragraph (8) on page 11, Recovery Plans should not contain elements that should be left to the resolution plans. There should be a clear separation between the recovery and resolution plan. Having to identify the critical functions is therefore not relevant in a Recovery Plan, and should be left for the Resolution Plan. Nevertheless, a mapping of the main activities/operations across the different jurisdictions would give an overview on the functioning of the institution, which would be important, both for the institution (who needs to propose coherent recovery options) and for the supervisor (who will evaluate the appropriateness of the measures).

Article 6 – Strategic analysis - the requirements in the draft Regulatory Technical Standards paragraph 3 covers “business model and business plan”. These requirements are not listed in the draft Directive and are not relevant in the context. The Recovery Plan should be set on a more general level when it comes to describing the business.

Further, it has to be clarified how the requirements in Article 6 paragraph 5 (a) (5) relates to the requirements imposed on listed companies.

Q.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.

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” (Article 2(a)), which requires banks to reassess and determine the reaction to the actual situation.

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 as set out in Article 2 by "For the purposes of this Regulation, ...". However, the definitions provided in Article 2 of these draft RTS should clearly have no impact, reach and/or prejudice on similarly worded definitions used for other regulatory contexts such as ICAAP, for example.

Article 5(a)(1) and Article 5(c)(1)(a) stipulate that the "identification of natural persons" should be included. However, we have concerns about only including the identification (i.e. name and other personal details) of natural persons who have been and/or are involved in recovery planning. In fact, for recovery planning purposes, the role and function of natural persons who are to be involved is the only relevant information that needs to be provided. We therefore propose that the draft provisions be modified so that the roles and functions are disclosed.

Q.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)

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 particular, given that the tasks related and connected to recovery planning are not identical with risk management in a strict sense and concern also, 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 in its set-up.

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, the Recovery Plan takes significant input from those two governance processes/arrangements. It should be assessed whether information such as business and entity description should be rewritten so often in different regulatory reports. It is not negligible, since there are always costs in updating the same information but that is given at different points in time.

It must be possible to implement the plan in existing structures. Although an internal review of the organisation and its business would increase the awareness and transparency within the organisation, it is unlikely that this information will aid the plan to solve a forthcoming crisis. A Recovery Plan will, however, likely constitute a good preparation for a crisis situation but should not be binding since one is not able to foresee how a forthcoming crisis will unfold. When it comes to scenarios, banks are already conducting scenario tests within the ICCAP, the question is if you need to elaborate further with scenarios. Again, one cannot predict how a crisis will unfold, it is therefore difficult to choose the right scenarios or the right balance. Ranking among the various recovery measures is therefore neither a way forward.

Q.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 information requirements have to be consistent with the objective of establishing a Recovery Plan, see above under Q2.

Article 6(1) requires institutions to, among other, identify their “critical functions”. In our view this exercise is not relevant to recovery planning but rather would serve the purpose of resolution planning. Furthermore, it would have to be supported by analyses delivered by macroprudential supervisors. For example, the degree of substitutability of an institution’s business lines reflects the institution’s role in the market infrastructure, for an assessment of which supervisory support would appear appropriate. For comparability and resource efficiency purposes, “critical functions” should be made easier to define by providing sufficiently interpretable guidelines and/or examples in the explanatory notes.

In any case, the “mapping” of core and systemically important business lines called for under Article 6(3)(b) should be confined to legal persons and branches upwards of a certain size so as to avoid unnecessarily overloading the Recovery Plan.

Q.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?

The data requirements are overly detailed. There is no need for a contingency plan for each recovery option because one of the objectives of recovery is to preserve value and sell good assets which will naturally lead banks to be cautious. Another reason is that many banks have acquired M&A/divestiture skills and knowledge. Finally, as stated above, we are not in favour of automatically linking scenarios with recovery options. We propose to delete paragraphs (c) and (d) (p. 18).

We understand Article 6(4) of the draft RTS to mean that recovery options to be named in the Recovery Plan should include measures of an extraordinary nature as well as measures which may also serve or be used as normal or standard risk management measures. However, a clear distinction and allocation of recovery options to either category would not be possible and/or achievable, as the classification of a measure as normal/standard or extraordinary may change over time or in the light of the relative economic environment.

With regard to the “assessment of the effectiveness of recovery options” called for under Article 6(5)(d), it should be noted that credit institutions can provide an abstract description of identified recovery options in regard to particularly crisis-sensitive parameters such as capital ratios, risk-bearing capacity, liquidity and earnings both in the current scenario and in a stress scenario. However, because of uncertain market and competition conditions (e.g. when it comes to the planned sale of an investment), it is difficult to say anything definite in advance about the ability to implement the identified recovery options in the scenario then actually prevailing. The

requirements in this respect should therefore be qualified accordingly. For example, the probability of recovery options being implemented could be indicated in simplified form using a three-step scale (high, medium, low).

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

The EBF 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. We propose to move Article 7 to Article 5 (Governance).

Also, the requirements should be consistent with other requirements e.g. requirements imposed on listed companies. To achieve consistency at least the word “detailed” should be removed in paragraph 1 first sentence. Further, in subparagraph (a) it ought to be sufficient to require an internal communication plan and not who the recipients are. In paragraph 2 the wording “for each recovery option” should be removed, since this is a too far-reaching claim.

Q.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.

It is fine to require banks to identify what is needed to execute recovery options, but action should not be automatically triggered. As with indicators, this should depend on the specific scenario and option. The Recovery Plan should only demonstrate how each recovery measure could be implemented in a timely manner. No further preparatory measure should be required.

Regarding internal procedures, institutions will have internal mechanisms and procedures to follow. We are not entirely sure if it is justified to include them in Recovery Plans.

Q.9 Do you agree that some of the costs of preparing recovery plans are already incurred by the requirements of having a proper risk management framework?

Yes. To some extent the costs of preparing Recovery Plans are incurred by the requirement of having a proper risk management framework. However, the basic fixed cost for small banks will be proportionally larger. The new requirements will also involve additional authorities which in turn will generate higher costs including reporting costs.

Q.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?

The EBF is unable to make any further suggestions.

Q.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?

In principle yes, however, the basic fixed cost for small banks will be proportionally larger.

Q.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?

Yes. However, we note that it would be helpful if the EBA could present representative calculations for different classes of banks.

