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— **EBA Discussion Paper on a template for recovery plans
(EBA/DP/2012/2)**

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Dear Sir, Madam,

Ref. BdB: RE.35

The Association of German Banks, which represents the interests of over 200 private banks and 11 regional member associations in Germany, welcomes the opportunity to comment on the *EBA Discussion Paper on a template for recovery plans (EBA/DP/2012/2)*.

— The template presented is in principle an appropriate framework for drafting recovery plans. The drafting of such plans may, it is true, be based partly on already existing processes – under German banking supervisory law, for example, risk management includes "*the definition of an adequate contingency plan*". Recovery plans that are designed to ensure an institution's long-term viability in the event of a significant deterioration in its financial situation go beyond this, however. They pose new challenges to institutions and, subsequently, to banking supervisors/resolution authorities vetting the plans. The proposed template can therefore serve, in particular, to harmonise national supervisory practice in this area, e.g. with regard to the amount of information required or the interpretation of terms.

We now wish to comments as follows on selected individual aspects of and questions in the discussion paper:

Q.3: German banking supervisory law does not contain any provisions which conflict with elements of the template. For one thing, supervisory law includes the requirement that institutions define an "*adequate contingency plan*" as part of their risk management (Section 25a of the German Banking Act). For another thing, it sees drafting such a plan not as a preventive measure but as a danger-averting. In the event of failure to comply with the supervisory requirements for capital adequacy or liquidity, BaFin (the German financial supervisor) can order the institution concerned to submit

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a restructuring plan showing how and within what period of time it intends to sustainably restore its capital adequacy and liquidity (Section 45 of the German Banking Act). If an institution's distress poses a threat to financial market stability, BaFin can, prior to issuing a transfer order, require the institution to submit a viable recovery plan (Section 48c of the German Banking Act). This recovery plan must indicate in particular the measures that will be used to eliminate the going-concern risk in the short term. Furthermore, the German Bank Reorganisation Act, which entered into force in 2011, offers institutions a voluntary procedure enabling them to manage a crisis on their own. Under this procedure, an institution is required to submit a plan showing how it intends to overcome the crisis.

Q.4 and Q.12: The recovery plan should neither have any binding effects nor include a ranking among the various recovery measures. Although, when drafted, plans are based on different stress scenarios, the concrete circumstances calling for the implementation of recovery measures will be virtually impossible to foresee in individual cases. It would therefore be detrimental to the objectives pursued by recovery plans if binding effects or a ranking of measures were to prevent an institution from being able to respond flexibly to a given situation.

Q.5: We feel that the proposed template is sufficiently comprehensive. There is no need to add further details in our opinion.

Q.6: In-depth analysis of stress scenarios is likely to be a significant element in the drafting of recovery plans. Crisis or stress scenarios will likely entail, above all, management of an individual structural or business-performance-related crisis. Where systemic crisis scenarios are concerned, the question is raised as to whether in this case the envisaged recovery measures – e.g. corporate actions, divestment of holdings or a reduction of risk assets – would be possible to the required extent.

Q.9: Recovery plans should, in our opinion, be drafted at group level to include all legal entities. This appears sufficient, as a recovery plan at group level will also cover, in particular, the systemically important parts of subsidiaries as well as those vital for ensuring business continuity.

Q.10: The template should only set out possible recovery measures in a general manner, e.g. corporate actions, better risk shielding/reduction or divestment of holdings, and not on an exhaustive basis.

Q.11: We are expressly opposed to disclosure of recovery plans. Such plans contain highly sensitive information about an institution whose disclosure would provide third parties in particular with a take-over blueprint. Furthermore, banks operate in a highly sensitive market environment in which information allows (supposed) conclusions about the stability and quality of a bank (particularly its solvency). This can trigger in some cases strong market reactions which – as the financial crisis has shown – may even threaten financial stability. This is why supervisory/resolution authorities should be required to maintain confidentiality about the contents of recovery plans, which inevitably contain trade or business secrets of the institutions drafting them. It should also be ensured that, when information about a recovery plan is shared with supervisory/resolution authorities outside the EU, these authorities treat the information they receive as confidential.

Q. 15: Particularly when drafting a recovery plan for the first time, an institution should develop the plan in an ongoing dialogue with the supervisory/resolution authority.

Yours sincerely,



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