

*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 almost 5000 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 only.*

## **EBF Response to EBA Discussion Paper on a template for Recovery Plans**

### **General Remarks**

The EBF supports the concept of Recovery and Resolution Plans (RRPs) and in general believes that the EBA template for a Recovery Plan is well-balanced and FSB compliant. A Recovery Plan should encourage the planning process and at the same time ensure that banks are aligned to common supervisory practices in this area. It should not be overlooked however that too detailed requirements could restrict the institution-specific recovery planning and the necessary flexibility to adjust to specific risk situations. The EBF would like to raise the following key messages:

- **Global Consistency of European regulation**

Globally harmonised rules are of key importance to ensure effective. While we welcome the EBA leading in the debate on RRPs we are concerned that the current work might deviate from the future designs for a globally harmonised framework as pursued by the Financial Stability Board. A globally aligned approach should ensure that there is a common tool box and understanding that can be deployed by all crisis management groups, facilitating the cooperation among different resolution authorities and ensuring internationally consistent outcomes.

- **Group Resolution will optimise outcomes for internationally active banks**

We believe that the group recovery plan has to be the base and that plans for subsidiaries/branches should be a part of that plan. 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.

### **The importance of Confidentiality**

Information contained in RRPs 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. Special care needs to be taken with regard to the flow of information across borders.

- **Clear separation between Recovery and Resolution**

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 systemically significant 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).

- **Recovery plans should merely set out strategic options in case the financial soundness starts to deteriorate**

The particular set of actions chosen from the recovery plan should be decided by the management. A recovery plan should therefore be flexible, consisting of a list of mechanisms available to the management to be used according to the circumstances of the particular case. Detailed stress scenarios should therefore not be a part of a recovery plan.

- **The recovery plan remains the responsibility of the bank's management**

Our members view the recovery phase as being firmly their domain, during which the board of directors remains responsible for the management of the group. A transfer of control away from management before the point of non-viability risks disenfranchising shareholders and opens the supervisor up to moral hazard and criticisms of acting as shadow directors if disproportionate and premature action is taken. At the same time however we expect the supervisor will be employing a graduated approach intensifying its supervisory engagement as the bank moves further along the continuum from going to gone concern based on one (or probably more) early warning signals.

- **Proportionality**

The EBF believe that the failure of small as well as large banks may have potential systemic consequences. Therefore the framework for recovery plans should be applied to all banks, respecting the principle of proportionality, according to the nature, scale and complexity of the financial institutions.

- **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 Crisis Management Directive.

Contact Person: Timothy Buenker, [t.buenker@ebf-fbe.eu](mailto:t.buenker@ebf-fbe.eu) Related documents: European Commission on Green paper on Shadow Banking: <http://www.eba.europa.eu/cebs/media/Publications/Discussion%20Papers/DP%202012%2002/Discussion-Paper-on-Template-for-Recovery-Plans.pdf>

## **Response to Discussion Questions:**

### **Q.1 Have you already drafted/approved a recovery plan or are you in the process of doing so? If so, please reply to the following questions referring to your experience**

The EBF has not been directly involved in drafting a recovery plan so is unable to comment here.

### **Q.2 Is your recovery plan or would your future recovery plan be in line with the contents of the template and its underlying approach? Please mention the relevant differences, if there are any**

We believe the contents and approach of the template meet our objectives of providing a consistent approach but one which is sufficiently flexible to accommodate the proper degree of proportionality that we expect.

Below we comment on aspects of the template which could be further elaborated on in any eventual regulatory standards in the area of recovery planning, which we believe should be produced soon after the EBA's consideration of the responses to the discussion paper, in order to promote regulatory convergence in national competent authorities' recovery planning requirements.

#### **Governance**

We believe that the summary should explicitly identify the governance process that has been deployed to create the recovery plan (which we would recommend be considered in detail and signed off at board level) and also identify a key member of the management team as taking prime responsibility for its production and regular review.

#### **Recovery option(s)**

It may be helpful in the summary to identify the most credible recovery options (but with no particular ranking) and the associated time frame for its implementation, as well as identify specific impediments to recovery and action that is being taken to overcome them. This emphasises that recovery planning is an evolutionary process - the first recovery plan presented by a bank is unlikely to be perfect, although the recovery plans for smaller banks should not be 'over-engineered'. It is unlikely that the most credible recovery options will change materially with the passage of time.

### **Q.3 Are there legal provisions and/or guidelines in place in your jurisdiction with regard to recovery plans and resolution plans? If so, are there any elements of this template which conflict with those provisions?**

We believe that the draft EBA template is largely in line with the current environment under which some EU banks are preparing recovery plans although as we outline in our answer to question 6 we do not think the authorities should set standardised scenarios to which banks should plan as each one will be uniquely susceptible to different stresses.

**Q.4 What kind of legal implications and/or binding effects does the plan have in your jurisdictions, if any, and what should they be, in your opinion?**

One has to remember that the plan is primarily a concern for the bank. Although an internal review of the organisation and its business will increase the awareness and transparency within the organisation, it is unlikely that the plan will solve a forthcoming crisis. The 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 be. It would be counterproductive to limit the measures to avert a specific threat or face the occurrence of a crisis through a binding or inflexible plan.

Recovery planning, with the involvement of supervisors, will be an iterative process which we do not believe is amenable to enforcement action, although we recognise that supervisors may impose extra levels of capital upon institutions that they deem more difficult to resolve.

**Q.5 Do you believe the draft recovery template to be sufficiently comprehensive and cover all the aspects relevant for the purpose of the recovery plan? If not, please specify what is missing.**

Yes, we consider that the proposed recovery planning template comprehensively covers all the key aspects that should be considered in creating a recovery plan.

However, we recognise that as different parts of the world engage with recovery and resolution planning with different degrees of enthusiasm and rapidity there is a risk that different national regimes will develop different requirements. Whilst recognising that the EBA is likely to be tasked by the European Parliament with developing a template we also believe that there would be merit in the Financial Stability Board developing and promoting a consistent template for recovery plans, in order to avoid placing undue burdens on banks which will result in the provision of contradictory and inconsistent recovery plans. We urge the EBA to ensure that aligned templates are used for internationally active banking groups - these could be tailored in the Crisis management group where necessary to reflect individual banking group's specificities.

**Q.6 Should the recovery plan include scenarios and assumptions as possible points of reference for testing the various recovery options? What role should they play within the recovery plan and with respect to the possibility to consider per se the various triggers and negative impacts?**

EBF agrees with much of the proposed template as regards scenarios. In our view scenarios should remain relatively high-level and generic, and be used simply as a back-drop against which the suitability of various recovery options can be assessed in varying circumstances.

Any attempt to impose prescriptive and detailed scenarios is likely to lead to over-detailed and over-engineered recovery plans that may prove to be inapplicable when confronted with a reality that will be different from any detailed scenarios that have been imagined in advance. Recovery plans should be flexible, consisting of a list of mechanisms available to the management to be used according to the circumstances of the particular case. Detailed stress scenarios should therefore not be a part of a recovery plan.

While EBF Members agree with the discussion paper that there are links between the recovery plan and existing capital and liquidity stress testing requirements, they note that recovery scenarios fulfil a very different purpose than capital and liquidity stress-testing exercises. Such stress-test scenarios are designed to test the resistance of banks to adverse circumstances, whereas recovery plans are designed to provide a ‘menu of options’ to be implemented in extreme circumstances which could, if left to unfold unchecked, bring a bank to the brink of resolution. For the majority of banks, such circumstances are far beyond those of regulatory stress-tests, and the severity of stress required to bring each bank to this point will vary immensely between banks according to their respective business and geographical diversity, and their inherent financial strength.

So while some EBF members would like to see Recovery Plans, for reasons of efficiency, to build on existing frameworks for stress testing, capital planning buffers and contingency funding plans the EBF notes that the scenarios for resolution planning need to be calibrated with regard to events triggering early recovery actions.

**Q.7 How would/do you identify quantitative and qualitative recovery early warnings and triggers? What are the key metrics you would use to develop early warnings and triggers?**

A range of quantitative triggers could be contemplated including based on the proximity of a bank’s actual ratios to the minimum regulatory capital and liquidity ratios incorporated into Basel III and utilising forward looking metrics based on stress-testing. We would prefer to characterise possible triggers as early warning signals (rather than hard triggers) that will catalyse further discussion. We believe the latitude that our preferred approach of viewing quantitative metrics as triggers for discussion, rather than triggers for action is particularly relevant to G-SIBs. In order to ensure a bank does not tip into resolution there will need to be an element of informed judgement involved, particularly of the bank’s recovery plan, which should remain the responsibility of a management team appointed by the shareholders.

In particular we do not believe quantitative liquidity triggers would be helpful as liquidity can be ephemeral and dependent on market conditions – indeed they might increase funding pressures. Rather the authorities should have the ability to closely monitor bank’s liquidity position and be able to assess it in the context of current market conditions and the liquidity positions of its peer group, e.g. by monitoring financing costs and market capitalisation.

**Q.8 What kind of corporate governance arrangements have you adopted or would you adopt for recovery planning? Please comment on differences to the template.**

The EBF notes that even for larger banks it is not always the case that responsibility for the Recovery Plan should reside at board level. The most appropriate qualified executive may not be a main board director. Therefore, we believe that banks should be permitted to delegate responsibility for RRP to a senior executive who is not a board member.

**Q.9 How do/would you ensure the consistency between your group recovery plan and recovery plans drafted by your main entities? For this purpose, are you aware of any obstacles in the current legal framework?**

The appropriate scope of the RRP (group level and/or local level) as well as the necessary consistency among them should be determined within the Crisis Management Group

attending to the bank organizational structure. For banks centrally managed it could be more appropriate that recovery planning be carried out on a top down basis, be coordinated by the home state regulators, taking into account local regulators (who should refrain from imposing ring fencing) views, and the wide range of tools available at parent entity level. In any case consistency between the group RRP and the local RRPs must be the main responsibility of home supervisor under the college and should be ensured to avoid gaps and overlaps and the overburden this would imply

**Q.10 What range of recovery measures do you think should be envisaged in the template?**

The list of measures should not be binding but each bank should propose idiosyncratic tools. Only measures providing a significant recovery should be retained in the plan. Consideration could be given to the following measures:

- capital, liquidity funding,
- reduction in business activity,
- sale of shares,
- reduction of risks.

**Q.11 Have you got any remarks or concerns related to the confidential nature of the information provided in the recovery plan? If so, please elaborate.**

The plan should not be made public. The information contained in recovery plans will be highly commercially sensitive for the bank and potentially provide a ‘take-over blueprint’. Authorities should ensure that access to data is strictly controlled and is confidentiality maintained, paying particular attention to the integrity of information that flows between jurisdictions. Recovery plans should not be shared until they are in their full and final form and even then not beyond the bank’s Cross-Border Stability Group. Information shared in this way should be subject to suitable confidentiality constraints, imposed on each regulator who receives the recovery plan (or part thereof) and agreed with the bank so they should not be shared with jurisdictions where there is a risk that the data will be available through Freedom of Information requests, or otherwise protected from such requests. This is particularly important for third countries that are represented in the colleges of supervisors.

Particular care will be needed for elements relating to any proposed M&A activity or potential closure of operations, and even then disclosure of such information by the home regulator may not be appropriate.

**Q.12 Should the plan include a ranking among the various recovery measures, differentiating between them with regard to possible scenarios and assumptions and taking into account the expected impact of each measure?**

We do not believe that it is appropriate to rank different recovery options differentiating between different scenarios and impacts. In our view this would introduce an expectation and focus by banks and regulators on a small number of possible solutions to a period of severe financial stress which ignores the experience of real life where problems can emerge for a whole range of often unexpected, reasons.

A ranking process would focus attention on the merits and demerits of different recovery options rather than developing and refining them as risk scenarios evolve.

**Q.13 How would you assess the credibility of a recovery plan? Please comment on your experience**

The credibility of the recovery plan should be assessed by the competent supervisor. EBF believes that the credibility of a recovery plan should be assessed by reference to the variety of options proposed, their geographical spread, their feasibility, and the likelihood that in aggregate their effect would be significant with regards to the proportion of group assets/liabilities that they represent.

Further, EBF Members think an important element that should be included is information on the scenario likelihood. This could provide an indication, even if not precise, of the distance of a bank to resolution.

**Q.14 What kind of information arrangements have you put in place to ensure that the right information is available within a short time frame for decision-making in a stress situation?**

EBF does not feel that the availability of information for decision-making is an issue specific to recovery situations. The correct management and supervision of financial institutions depends on accurate and timely information being available in all circumstances, and the assessment of the quality of management information is part of regular management and supervisory responsibilities.

**Q.15 How frequent should interactions/iterations between the supervisor and the financial institution be? What role should the supervisor play?**

Banking crises cannot be prevented without an effective working relationship between banks and their regulators and supervisors, which allows for an in-depth knowledge of the bank by the regulator/supervisor. The frequency and intensity of interaction with a bank should depend on the risk it poses to the financial system and range from close and continuous for the most systemically important banks to infrequent, but at least annual for smaller banks pursuing a simpler business model.

The supervisor's role should be to provide constructive, robust challenge to the capital and liquidity planning processes that form a crucial input into the creation of an RRP.

As a principle, the supervisor should bear responsibility for its decision regarding the approval of recovery plans. If it approves initially a certain set of recovery measures, it should not be allowed to oppose the application of specific recovery actions for no reason. Otherwise it would just make the private management's task of recovering the institution more difficult.

**Q.16 The implementation of a recovery plan is likely to structurally modify the financial institution and its sources of revenues. Should a forward looking business plan, assuming the implementation of the recovery options, also be part of the recovery plan?**

EBF disagrees that forward looking business plans, assuming the implementation of recovery options, should be included in a recovery plan. It is highly unlikely that all options will be implemented simultaneously, and therefore that the plan would have any link with reality. This, of course, does not preclude the assessment of the business impacts of the different options.

**Q.17 Please provide views on the impact, including your costs and benefits analysis, of the issues involved in the preparation of a recovery plan?**

The EBF notes that the US FDIC has estimated the resources required for the implementation and annual update of the recovery plans as follows<sup>1</sup>:

*Title:* Resolution plans required for insured depository institutions with \$50 billion or more in total assets.

*OMB Number:* 3064-New Collection.

*Affected Public:* Insured depository institutions with \$50 billion or more in total assets.

*A. Estimated Number of Respondents for Contingent Resolution Plan:* 37.

*Frequency of Response:* Once.

*Estimated Time per Response:* 7,200 hours per respondent.

*Estimated Total Initial Burden:* 266,400 hours.

*B. Estimated Number of Respondents for Annual Update of Resolution Plan:* 37.

*Frequency of Response:* Annual.

*Estimated Time per Response:* 452 hours per respondent.

*Estimated Total Initial Burden:* 16,724 hours.

*C. Estimated Number of Respondents for Notice of Material Change affecting Resolution Plan:*

37.

*Frequency of Response:* Zero to two times annually.

*Estimated Time per Response:* 226 hours per respondent.

**Q.18 Have you made, or do you plan, changes in the organisation to facilitate successful implementation of the recovery plan in the future?**

The implications of recovery and resolution issues as a whole will undoubtedly be integrated into the procedures and decision-making systems of banks. However, EBA should bear in mind that the intent of banks is not to successfully implement their recovery plan, but to successfully manage their business and make a positive contribution to the real economy.

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<sup>1</sup> <http://www.fdic.gov/news/news/press/2011/pr11150.htm>



The EBF does not deny the utility of robust recovery planning, nor the fact that recovery should be borne in mind when organisational changes are considered, but banks should not be forced to make recovery the focus of management or the driver of changes to their organisation.

