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VH/WSC/B02/12-110

DP-2012-02@eba.europa.eu

DP -2012-02 'EBA Discussion Paper on Template for Recovery Plans'

Dear Sir, Madam,

The European Association of Co-Operative Banks (EACB) took note of the EBA Discussion Paper on Template for Recovery Plans published on 15 May 2012. The members of the EACB generally support the content of EBA's template which is largely compliant with the FSB principles and with what we expect to see in recovery plans.

Considering that the questions are specifically addressed to credit institutions, the EACB is not in the ability to provide answers to specific questions. Nevertheless, the EACB would like to make some general remarks and address some issues of concern.

In the first place, we are concerned that the this discussion paper, which was issued before any concrete Commission proposal for a Directive on Crisis Management was published could lead to confusion and legal uncertainty. Given that the paper was drafted at the time when no Commission proposal was publicly available, answering the paper for stakeholders becomes difficult in order to avoid legal anachronism. In addition, the length of the consultation period (4 weeks) is short.

Secondly, the effect of this EBA' Template could be underestimated. The template may be considered as "guidelines" while in fact a recovery plan is something that banks have to draw up according to the proposal of the directive and on which EBA will have to develop standards. In our view, EBA should carefully play its role according to the EBA regulation to foster consistency and convergence of practices based and stick to the specifically attributed mandate in the final Crisis Management Directive to fill in the details.

We would like to see reflected in EBA's future template harmonized guidelines clearly distinguishing between the information useful for a recovery and resolution plan (e.g. especially the level of details) and the fact that recovery plan should not be requested at entity level but possible at group level only for those under consolidated supervision.

The voice of 4.000 local and retail banks, 51 million members, 181 million customers

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In the third place, we consider that the requirement for such a recovery template/plan should only be applicable to SIFIs or those with a material impact on financial stability. It is thus necessary to strictly apply the principle of proportionality, because as mentioned the set up of a recovery plan is mainly the responsibility of a credit institution. We consider that it would only become of interest to have such template/plan at hand for the use of several supervisors in different member states, in case of an institution which have a certain size, have certain nature of business which act cross-border. Moreover, EACB members indicated that the EBA template, in certain aspects, exceeds the degree of detail of the recovery plan format currently developed by national supervisors. In addition, in these cases national supervisory guidance is mainly provided for large internationally active banks. Therefore, detailed requirements set out in the template should be subject to the principle of proportionality and consider at least Article 4 of the Proposal of the European Commission for a “Crisis Management-Directive”.

As a fourth point, the general structure and general contents of the template are in principle fine. However, the requirements for a description of the group/institution seem to be referring to a very generic concept of groups. We consider it necessary to take specifically into account banking groups which are highly consolidated which have joint and several liabilities and an internal cross-guarantee system as according to Article 3 CRD (or Art. 9 CRD IV). In particular, with regard to the derogations allowed under that article, recovery plans on a solo basis are meaningless.

Moreover, the concept of the group should also be broadened to include a statement and/or evaluation if a bank is member of an Institutional Protection Scheme (IPS) as according to the current Article 80(8) CRD (or future Article 108(7) CRR). These systems have to ensure the solvency and liquidity of the affiliated institutions, so that a recovery plan without consideration of an IPS would be lacking the essentials. The special construction of and the measures that could be undertaken by such a scheme are far reaching and aiming in the same direction as the EU proposals for recovery plans for each single bank. Thus, any guidelines on recovery templates or plans should make a legal reference to co-operative banks which are highly consolidated or part of an IPS.

In the fifth place, there are serious concerns with regard to the handling of strictly confidential information. It must be guaranteed that a public access to this information has to be denied and that the most strictly provisions should be applied to officials of the competent authority. Especially the exchange of information (recovery plans) between different local authorities may cause serious harm to recovery plans of a group.

In conclusion, we welcome the intention of EBA to ensure a level playing field and harmonization as regards recovery planes and templates. However, the EACB consider that such exercise should be performed and made public in a timely manner which has its fundament in a specific legal mandate and ensures legal certainty.



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We thank you for taking our concerns into account.

We remain at your disposal for any further requests for information or questions.

Yours sincerely,

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General Manager

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Head of Legal Department