



BANKING STAKEHOLDER GROUP

CONSULTATION ON EBA/CP/2014/46ON
“DRAFT REGULATORY TECHNICAL STANDARDS ON RESOLUTION
COLLEGES UNDER ARTICLE 88(7) OF DIRECTIVE 2014/59/EU”

General Comments and Replies to Questions

BY THE EBA BANKING STAKEHOLDER GROUP

London, March 17th 2015

Foreword

The EBA Banking Stakeholder Group (“BSG”) welcomes the opportunity to comment on the Consultation Paper EBA/CP/2014/46 “Draft Regulatory Technical Standards on Resolution Colleges under Article 88(7) of Directive 2014/59/EU”

Comments

The BSG supports this initiative which aims to harmonise operational procedures and guidance for resolution authorities in setting up resolution colleges, including the involvement of third country resolution authorities, and clarifies different aspects of the resolution planning and joint decisions processes.

The draft Regulatory Technical Standard (“RTS”) illustrated in CP 2014/46 specifies the operational functioning of the resolution colleges that are to be established for EEA cross-border banking groups. The paper tackles three main areas, i) operational organisation ii) resolution planning joint decisions iii) cross-border resolution

First, the CP develops a coordinated and structured approach to the functioning of resolution colleges. This section addresses three main areas: the identification of members and observers of the resolution college, the equivalence of the confidentiality regime of third-country resolution authorities and the establishment and updating of written arrangements and procedures.

The scope of this section could have been more precise: indeed it seems difficult to know how a decision will be made, especially regarding the votes and the required majority.

Furthermore it accepts the possibility of disagreements by resolution authorities of subsidiaries which, whilst realistic in the current framework, is nevertheless unsatisfactory. This paper is a good step forward but additional steps will be required in the future to complete harmonisation.

The BSG likewise considers that further clarification is needed for the currently existing Crisis Management Groups (CMGs) since the RTS does not mention anything about it. It is worth remembering that the BRRD in its Article 88 (6) does not compel the establishment of resolution colleges in those cases where CMGs already exist.

Second, the draft distinguishes on the one hand Group resolution plan, resolvability assessment and substantive impediments to resolvability and on the other hand the joint decision process on MREL. It concludes with the cross border group resolution.

This section is the most relevant for banking groups.

A good point is the dialogue to be opened with the Union parent undertaking / management. This is mentioned several times in the paper. This is particularly important for the definition of the MREL requirement.

However the note could be more explicit in particular on the concept of “substantive impediments to resolvability” which is a central and crucial issue. For this reason, it would be helpful if this core notion were to be detailed by examples.

Another improvement could be a clarification of concepts such as the treatment of intragroup debt.

Finally, the paper refers to the cross-border group resolution.

The number of jurisdictions forming the resolution colleges is important and this is a particular concern for larger cross border institutions for which members and observers may entail a too large resolution college including EU and third countries resolution authorities. This would hamper the efficiency of the decision-making process.

Moreover, the legal scope of the Consultative Paper is reduced to Europe, so only authorities based in Europe are eligible as members. Thus, the role of third country resolution authorities is limited to participate as observers in the resolution colleges. The BSG regards this as an extremely restrictive limitation since decisions made in the resolution colleges have what are likely to be major effects on those third countries.

Apart from the observers’ role for third countries, the BSG is also concerned about the possibility of disagreement. In the absence of a consensus among resolution authorities, national authorities would take their own decisions in an uncoordinated way. The EBA’s mediatory role is critical during the process, but only affects intra-EU coordination. Again, procedures for conflict resolution should be designed when third countries are involved.

In conclusion, trust and collaboration among members of the college are very important and this RTS will certainly improve the functioning of the global network of resolution authorities in a transparent way.

Submitted on behalf of the EBA Banking Stakeholder Group

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