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Position of the European Financial Congress[1] in relation to the European Banking Authority's consultations concerning the draft guidelines on the Overall Recovery Capacity, i.e. the ability to restore the bank's capital and liquidity in exceptional but probable crisis situations [2]

Position development methodology

The position has been prepared in four steps.

Step 1

A group of experts from the Polish financial sector were invited to participate in the survey. They were asked to read selected parts of the EBA consultation paper and translated consultation questions with a request to provide a response in Polish. The experts were guaranteed anonymity.

Step 2

The European Financial Congress received 19 opinions from financial institutions and individual experts.

Responses were obtained from:

- Commercial and cooperative banks
- Regulatory authorities
- Consultancy companies
- Academics.

Step 3

All the responses were collected, anonymised and presented to the experts who took part in the consultations. The experts were asked to mark in the other consultation participants' opinions the passages that should be included in the final position, as well as those passages that they did not agree to. Experts could also adjust their responses on learning the arguments of other experts.

Step 4

Based on the responses obtained, the survey's coordinators developed a proposal for a summary position of the European Financial Congress. This proposal was presented to another group of experts. They were asked to make adjustments, if necessary. The final version of the responses was translated into English and submitted to the EBA.

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[1] The goal of the European Financial Congress (www.efcongress.com) is to engage in debate on the security and stability of the financial systems of the European Union and Poland. The EFC is run by the Centrum Myśli Strategicznych.

[2] https://www.eba.europa.eu/sites/default/documents/files/document_library/Publications/Consultations/2023/Consultation%20on%20draft%20Guidelines%20on%20the%20overall%20recovery%20capacity%20in%20recovery%20planning/1045490/CP%20Draft%20GLs%20on%20overall%20recovery%20capacity%20in%20recovery%20planning.pdf

Responses by the European Financial Congress to consultation questions

Question 1:
Do you have any comments on the general factors to be considered when assessing credibility and feasibility of the recovery options?

According to the majority of the surveyed experts, the current list of the general factors to be considered when assessing the credibility and feasibility of recovery options is sufficient. In their opinion, the list is complete and widely used.

In turn, the proposal to take into account the external impact of recovery options on external stakeholders and the financial system was assessed as a too far-reaching requirement. When assessing the credibility and feasibility of recovery options, the impact of the future condition of the financial system on the feasibility of the proposed recovery options seems to be more important than the expected impact of execution of the recovery option on the financial system.

The surveyed experts suggest that the draft guidelines should include an indication of how the assessment of effectiveness should be combined with the assessment of the feasibility of the recovery option, so as to ensure selection of the best options for the particular recovery strategy. They suggest avoiding mechanical aggregation of the impacts of using different options that could be used in the process of the institution's recovery under a particular scenario. This is because the ORC depends not only on the number of available options: equally important is to use those options together in a coherent and logical way leading to recovery.

Experts note that the credibility and feasibility of recovery options depend on the consistency and sequence in which they will be used – the execution of certain recovery measures might strain the institution's financial and capital position to a point where the implementation of any further recovery measures will be rendered impossible. In this context, some of the experts surveyed are concerned by the requirement presented in the proposal to draw up comprehensive full list of credible and feasible recovery options, each one of them considered independently from the others and without any reference to the recovery plan's specific scenarios.

One of the surveyed experts said that from the methodological point of view, in the ORC assessment a distinction should be made between a situation in which a given scenario applies to an institution that meets all regulatory requirements and a situation where the institution has already launched all or most of the available recovery options and is in the process of implementing its recovery plan. Account should be taken of the possible access to foreign capital markets (institution's ratings, ownership structure), which to a large extent determines the timeframe for both the capital and liquidity ORC.

Competent authorities should consider adopting standards/ common assumptions regarding selected option parameters for individual options reflecting the specific nature of particular countries/ markets (e.g. in terms of time needed to implement options, the need to sell NPL portfolios or obtain capital injection). Note is taken of the limited possibilities of assessing the impacts of options on the financial system by institutions, and it seems that such an analysis should be carried out by or in coordination with competent authorities (e.g. through guidelines) that have data that may be needed to carry out the analysis.

The time-consuming nature of analyzes and the fact that they quickly become out of date (due to the time perspective of the underlying assumptions) aroused concern among some of the surveyed experts. They suggest that the level of detail of credibility and feasibility options should correspond to the institution's financial position at the time of development of the recovery plan. This would mean that competent authorities would approve the performance of simplified option analyses in the case of institutions with good financial standing, for which in-depth analyses do not add to the accuracy of calculations or the recovery plan credibility due to the short-lived nature of the underlying assumptions. Analyses should be expanded if the institution's financial standing deteriorates.

Some experts point out that building a wide set of options for calibrating the OCR scope will significantly increase the workload for smaller credit institutions. With their limited personnel and system resources, that expectation might give rise to the risk of those smaller institutions being unable to conduct comprehensive analyses and appropriately document them in time to meet the deadlines for drafting recovery plans.

Other detailed comments on the consulted document included:

- Taking into account the impacts of the considered recovery actions on the feasibility of a recovery and resolution plan, and extending the list of general factors to be taken into account when assessing the credibility and feasibility of recovery options, contained in paragraph 19 of the draft guidelines.
- Presentation of the estimated impact of individual actions on the entity's total loss absorption and recapitalization capacity measured by the minimum requirement for own funds and eligible liabilities (MREL), the possibility of meeting the requirement presented in Article 44(5)(a) of the BRRD (the 8% requirement), and a change in the size of the entity's activities to an extent that might result in a change in the assessed criticality of individual functions performed by the entity.
- Taking into account only those recovery options whose implementation remains within the scope of responsibility of the entity's bodies. In particular, the option of obtaining extraordinary liquidity support from the central bank and covering losses and restoring the entity's capital base by writing down or converting the capital instruments referred to in Article 59 BRRD.
- The need for more details regarding assessment of the credibility and feasibility of recovery options in relation to paragraph 19f of the draft Guidelines (anticipated timeline) by indicating the date of implementation and the time of completion of the option. In this situation, it will be important to indicate how fast the option can be implemented (whether it requires ad hoc preparatory measures, e.g. portfolio selection: selecting exposures for sale, preparing a request to the supervisory authority to approve a specific option, where the approval is required), as well as specifying the implementation timeframe (until the option is implemented and the intended effect is achieved).
- With regard to the expected financial impact referred to in paragraph 19e - a clear indication should be given of the costs to be incurred by the institution in connection with the implementation of the option (including an indication of how the implemented option affects the possibility of not only achieving but also maintaining long-run profitability in future (beyond the recovery plan) – for example: an option providing for

the sale of a profitable loan portfolio may improve the profitability in the short term, but in the future the bank may find it difficult to maintain profitability due to the reduced size of its business).

- As regards the impact on capital, liquidity and profitability (paragraph 19e), it is suggested that specific lead indicators are specified for individual categories (e.g. TCR, LCR and ROA).
- In addition to identifying impediments (operational, legal, reputational and financial, including accounting-related, it is worth specifying (in accordance with paragraph 19g) that the assessment of credibility and feasibility of recovery options should also take into account actions (and their effectiveness) designed to overcome those impediments.

Question 2:
Do you have any comments on the specification of the scenario severity for the purpose of calculating the 'scenario-specific recovery capacity'?

Some of the surveyed experts did not comment on this point.

Experts largely concurred that scenarios should be severe enough to lead to breaches of regulatory capital and liquidity minimums. At the same time, the specific source of the shock (systemic, idiosyncratic or mixed) should be reasonably justified to make the scenarios as close to reality as possible rather than improbable. This is because the plausibility of the scenario determines the scale and time of using recovery options.

In turn, one of the experts said that the exception provided for in paragraph 22 should be removed, as in his opinion it is unlikely that an institution would not be able to draw up a plausible scenario that would lead to a breach of capital or leverage requirements. According to others, regulatory action should be expected hear – namely the Regulator should propose macro assumptions for the stress scenario relating to the entire banking market for the stress scenario (in the context of preparation of Recovery Plans by banks). In the discussion on the same point, many experts note that currently banks use reverse stress tests where it is not possible to work out a plausible stress scenario. They point out that a recommendation to use this solution could be considered (see paragraph 21) if the standard scenario does not result in triggering the expected recovery options. According to some experts, not every scenario should simultaneously test the bank's liquidity, capital and profitability ORC – but it is important to ensure that all scenarios converge together to cover these categories.

Suggestions were made to clarify that the recovery plan should activated only after stated levels of capital or liquidity indicators have been breached. A breach of other indicators from the minimum list of recovery indicators (EBA/GL/2021/11) – except for capital or liquidity indicators – should not in itself trigger the need to activate the recovery plan (e.g. in the case of profitability indicators).

Some believe that the guidelines confirm the extent and depth of the scenarios currently defined in the EBA Guidelines on the range of scenarios to be used in recovery plans, and in the Guidelines for common procedures and methodologies for the supervisory review and evaluation process (SREP) and supervisory stress testing.

Some experts positively assessed the possibility of preparing an additional explanation when a severe scenario for the sector and the economy does not result in the required reduction of capital or liquidity indicators. This is particularly common in the case of small banks with limited activity or with strong ties with the parent.

According to one of the respondents, the ORC requirements for cooperative banks should be more lenient, especially if they are members of the Institutional Protection Scheme (IPS).

Some of the respondents say that a clarification might be useful in the case of subsidiaries of corporate groups to provide also for a scenario where no parent support is possible. It should be emphasised here that even if a group financial support agreement is signed between a domestic subsidiary and its parent, as referred to in Article 19 of the BRRD, the directive provides for the possibility of the support requirement being infringed, e.g. in the event that the provision of the support would jeopardise the liquidity or solvency of the group entity providing the support or create a threat to financial stability in the Member State of that group entity (see Article 25 in conjunction with Article 23 of the BRRD).

According to one of the experts, no reference was made to the issue of profitability, especially long-term profitability, which is crucial for the assessment of stability and credibility of an institution. The consulted guidelines should also include a reference to profitability in terms of assessment of the severity of scenarios (paragraph 21 of the guidelines) and the impact of the options applied on profitability indicators (paragraphs 25 and 27 of the guidelines), even if this area should not be included in the analyses. This will allow institutions to apply uniform rules for the assessment of 'scenario-specific recovery capacity', which will consequently ensure consistency of the assessment and its comparability between institutions.

Question 3:
Do you agree with the proposed criteria for the relevant starting point, timeframe (in particular with regard to the 6-month period for the LCR and NSFR) and representative indicators (in particular with regard to the explicit consideration of potential other/substitute indicators – e.g. MREL) for the calculation of the 'scenario-specific recovery capacity'?

Some of the experts regarded the proposed criteria relating the timeframe and representative indicators as adequate, but some suggested that they should be differentiated.

According to a large group of respondents, the timeframes for both capital and liquidity ORC should vary depending on the nature of the shock that triggers a specific scenario. The timeframe should be adapted to the nature the financial institution, and should also take into account the nature of the stated stress scenario. In the case of transient and short-lived shocks (liquidity shocks), the timeframe necessary to use recovery options should be narrower than in the scenario where the shock is relatively long-lived (capital and profitability shocks). The proposed timeframe for calculating the effects of the implementation of capital recovery options should range from 12 months (transient shock, no sequential implementation of options) to 18 months (permanent shock and sequential implementation of options). Similarly, the timeframe for calculating the liquidity recovery option should range from a few weeks (LCR) to more than 12 months (NSFR).

If in order to 'maximize the power' of the activated recovery options, it is necessary to implement them sequentially (e.g. first restore profitability through cost restructuring, deleveraging, assets sales, etc., and go to capital markets only after returning to profitability and gaining investment capacity), the framework should be extended, especially with regard to capital recovery. Without this, it might not be possible to obtain the maximum effect of the implemented recovery options. According to some experts, with the proposed timeframe, the regulator tacitly expects that the institution will return to the financial condition from before the implementation of the recovery plan within six months, which is considered a very short period.

Some of the respondents are of the opinion that the list of indicators is sufficient. In their opinion, the fact that this is not a closed list and that other measures can also be used for internal purposes provides sufficient flexibility. As regards the proposed additions, some believe that MREL should be added to the list of representative indicators, although opposing opinions were also voiced. One of the experts considers it reasonable to extend the list of indicators used in the scenario analysis to include metrics determining the level of internal sources of loss coverage and recapitalisation of the entity.

According to the draft, the OCR is to be calculated only for the indicators specified in paragraph 27 (representative liquidity and capital indicators), and the Recovery Plan is activated only in response to a breach of capital and liquidity indicators. As the national law and local supervisory practice provide for the need to use a wider list of recovery indicators (e.g. short-term deterioration in profitability), some respondents had doubts whether the OCR should be calculated only for the indicators specified in paragraph 27 (representative liquidity and capital indicators) or for a broader set of indicators. If the 'scenario-specific recovery capacity' is determined only with regard to capital and liquidity indicators, will other leading indicators be excluded?

One of the experts says that a more thorough explanation is needed regarding the approach to be used in the case of a stress scenario that takes into account deterioration of both capital and liquidity, where the leading recovery indicators are breached at different points in time.

Question 4:
Do you have any comments on the general steps to be followed for the determination of the ORC?

According to a large number of experts, the proposed approach is largely in line with market practice. They do not comment on the general steps to be followed to determine the ORC.

The following isolated comments were made by some experts:

- In selecting recovery options appropriate to a particular scenario, institutions should also consider whether a stated option can be applied if it is being used by other institutions at the same time (for example, a recovery option where several large banks are increasing their capitals at the same time can hardly be described as systemically plausible).
- Clarification should be provided as to what options should be used to calculate the ORC. All possible options or only those adopted for implementation after a supervisory decision? In Poland, the Financial Supervision Authority (KNF) may decide to waive a particular recovery option at the request of the entity subject to recovery.

- The requirement that stress will always cause a breach of capital requirements means that in some situations such scenarios may be overly pessimistic if not outright unrealistic.
- A suggestion is made to take into account banks' participation in the IPS.
- As regards the Calculation of 'scenario-specific recovery capacity', paragraph 31 is not sufficiently clear according to some respondents.

Concerns were raised about ORC calculations – which options should be considered? Should only account be taken of options designed for recovery plans (including options shared by the recovery plan and contingency plans), or should options specific solely to contingency plans be considered as well? That said, should the actions included in the ORC calculation allow exit from the recovery plan level (Red) to the contingency plan level (Orange), or only from the recovery plan level (Red) to the watch level (Yellow), or even to Green, meaning the lack of any breaches of recovery plan indicators.

Some experts point to the difficulty in assessing the probability of a given option in a stress scenario, which they believe is highly judgmental. In terms of recovery options with limited probability (paragraph 29), it is suggested to consider their effectiveness only taking into account the (low) probability of their implementation.

The guidelines do not explicitly specify whether the 'scenario-specific recovery capacity' assessment should be performed for all (simultaneously) options available and appropriate to a specific scenario (even if a subset of those options would be more effective in terms of impact on recovery plan indicators and might be also an effective recovery strategy) and whether the 'scenario-specific recovery capacity' assessment should be carried out for several options that are mutually exclusive but available in a specific, and for relevant sets of options (recovery strategies). This may lead to that requirement being differently interpreted by institutions and, consequently render the ORC non-comparable between them. In order to ensure a consistent approach, the guidelines should require competent authorities to clarify the rules for assessing the appropriateness of options in individual scenarios.

Question 5: Do you have any comments on the definition of the ORC as a range between the lowest and the highest 'scenario-specific recovery capacity' both in terms of capital and liquidity?

In our opinion, the introduction of the ORC range requirement may be an excessive measure. It would only add to the complexity of the recovery plan, increase the range of options and reduce the plan's transparency (and thus usefulness).

Defining the ORC as a range between the lowest and the highest 'scenario-specific recovery capacity' is somewhat controversial. The proposed approach provides for the preparation of many different options and entails an attempt to assess their interdependence, in particular where some options might be mutually exclusive or weakening. It seems that it will be difficult to determine a reliable and comparable ORC based on the difference between the highest and lowest 'scenario-specific recovery capacity'. The ORC calculation based on 'recovery capacity' from different scenarios and thus with starkly different inputs (resulting from various underlying conditions for each specific scenario) can hardly be called reliable, especially as there may be different starting points for each scenario and therefore the ORC may relate to different periods[3]. Experts pointed out that it would be purposeful to work on the integration of supervisory stress tests with suitable recovery options that might be implemented in particular conditions (scenarios), ensuring a greater standardisation of possible recovery options[4].

However, it might be a good idea to estimate the marginal amounts of capital, liquidity and profitability requirements in a given scenario, i.e. the amounts necessary to restore the desired levels of the leading indicators of the recovery plan (TCR, LCR or NSFR – depending on the bank's liquidity profile and the characteristics of the crisis scenario, and ROA) to: (1) The minimum regulatory requirement (red level of the recovery plan) and (2) the BAU level consistent with the bank's risk appetite and ambitions (e.g. capital targets, bank strategy).

Some experts pointed out that the OCR should be a conservatively estimated minimum amount in the context of the recovery capacity in a stated scenario in order to restore the institution’s capital and liquidity position.

The experts note here that the draft guidelines do not contain any precise or transparent definition of the ORC, as presented in the ‘Explanatory box on the ORC determination’[5]. It seems necessary to clarify what is understood by the lowest and highest ‘recovery capacity’.

In particular, the guidelines fall short of defining clearly:

a) whether the calculated range between the lowest and highest ‘scenario-specific recovery capacity’ should take into account results from different scenarios (if more than one scenario applies to the capital area or, similarly, more than one scenario applies to the liquidity area), or also the results of recalculations for different sets of options within one scenario;
b) how to calculate the sum of the impacts of implementing a set of options on the relevant recovery plan indicators, i.e. the ‘scenario-specific recovery capacity’ (e.g. it is the difference between the recovery plan indicators before and after implementation of the recovery options),

which may lead to that requirement being differently interpreted by institutions and, consequently render the ORC non-comparable between them.

One of the experts is of the option that determination of the highest and lowest ‘scenario-specific recovery capacity’ is appropriate, and additionally it should be supplemented with the longest and shortest timeframes (e.g. 12-18 months for capital recovery options and 6-8 months for liquidity recovery options). In this way, the ‘recovery capacity’ for the stated scenario would be two-dimensional, which would significantly strengthen the entire ORC concept with obvious benefits for supervisors and banking institutions. The introduction of the time dimension and the use of such a double mechanism would increase the effectiveness of recovery options and emphasise the very important trade-off between the time of implementation of recovery options and their effectiveness.

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[3] It should be noted here that in the event of the same valuation of recovery options in individual scenarios, the ORC will be a single number and so it will not be possible to establish a range.

[4] In particular, the LCR itself can be very sensitive to the method of allocating excess liquidity. For example, in a situation where interbank deposits (that reduce outflows, decreasing the numerator) are converted into funds held at the central bank (increasing the denominator), the LCR will decrease even though objectively liquidity has improved.

[5] ‘Explanatory box on the ORC determination’, Consultation Paper: Draft Guidelines on overall recovery capacity in recovery planning, pp. 12-18.

Question 6: Do you have any comments on the scope of the assessment of the 'scenario-specific recovery capacity' by the competent authorities?

Point 37c of the guidelines refers to the need for competent authorities to assess the quantitative impact of recovery options as calculated by institutions. It also provides for adjustment of the calculation by competent authorities where, in their opinion, the quantification provided by institutions is not based on realistic and plausible assumptions. Competent authorities should therefore be required to develop clear rules specifying the criteria and parameters for their assessment, and apply them consistently to institutions so as to ensure a level playing field. This should also take into account determining the consequences of the assessment for banks (a decision to approve or reject the recovery plan, or recommendations to be implemented by the bank in relation to the 'adjusted OCR'), which would ensure a faster response from the authority. The assessment methodology should be made available to banks.

In order to be able to carry out comparative analyses in accordance with paragraph 38, taking into account the different types of scenarios assumed in recovery plans and the nature of individual institutions, competent authorities should provide the assumptions to be adopted in the analysis of recovery options and in the design of scenarios. For example, a comparison of the list of recovery options between different institutions is possible only if the institutions consider the same scenarios in which those options are used. For this reason, the supervisor should consider developing a universal scenario for banking market entities (or a peer group of banks).

It should be noted here, however, that comparing the results between banks, in particular in the context of the recovery options used, may not be reliable. Each bank has a different starting level of indicators, which causes differences in the degree of severity of the reverse scenarios applied. For this reason, this would be a method for assessing the current liquidity/capital position rather for analysing the selected bank's actual ability to restore its capital/liquidity position.

Experts also point out that competent authorities should in particular assess whether the simultaneous application of the same or similar recovery options by several institutions will be possible and whether it will not give rise to (or increase) systemic risk.

It was also suggested that the supervisor should publish aggregated or anonymised assessment results[6].

Question 7: Do you have any comments on the proposed ORC score?

The idea behind the scoring is good, although OCR scoring is more important in those jurisdictions where recovery plans are not subject to approval by competent authorities.

Nevertheless, it is important to note that there will be no consistent approach across the sector – individual scenarios are developed by banks, but even scenarios developed by supervisors may impact institutions differently[7]. Accordingly, the scoring should apply to the

[6] Using the example of the SREP assessment result publication by the ECB (e.g. ECB, *Aggregated results of SREP 2022*, www.bankingsupervision.europa.eu/banking/srep/2023/html/ssm.srep202302_aggregateresults2023.en.html)

[7] For example, for a bank with a weak capital position, a low stress will cause its indicators to be breached. So it will be easier for it to improve the indicators by implementing options in response to the stress. On the other hand, institutions with a very good capital position may apply massive stress in order to reduce the indicators to the expected levels, and thus potential measures in such stress conditions will not necessarily bring appropriate results as in the case of a lesser stress.

bank's indicator level when stress starts, as well as to the improvement of certain indicators during stated time intervals (for this reason, the timeline of 12 months for capital should be extended).

Still, the experts believe that the scale should be extended to 4[8] or even 5 scores. Such broader ORC scale (of 4-5) will facilitate the approval of recovery plans by the regulator and provide guidance to banks. That score will indicate the 'distance from perfection'[9].

At the same time, it is necessary to bring up again the suggestion of developing a coherent methodology of assessment and scoring based on quantitative factors. Such methodology should not give room to any additional (discretionary) interpretation (resulting in downgrade/ upgrade) by supervisory authorities[10]. The methodology should also clearly define the consequences of the plan assessment for the bank[11]. It should be borne in mind here that the ORC score (and thus the determination of areas for improvement by competent authorities) is of course influenced by the prevailing macroeconomic situation, which is the basis for calculating the impact on the indicators (due to the impact on stress scenario results).

It should be emphasised that the proposed ORC score does not apply to an institution that is in the process of implementing a recovery plan and has already implemented all or most of recovery options. For such cases, a different, specific solution should be developed.

There is some ambiguity around the score after 'adjustment'. The criteria for assigning the 'adjusted ORC' score are not fully understandable and should be clarified[12]. Likewise, it is not clear whether the 'adjusted ORC' will be calculated by the supervisory authority and submitted to the bank for adoption (and whether there will be any room for

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[8] As in the case of the SREP score scale (see EBA Guidelines on common procedures and methodologies for the supervisory review and evaluation process (SREP), EBA/GL/2014/13, https://eba.europa.eu/documents/10180/935249/EBA-GL-2014-13+%28Guidelines+on+SREP+methodologies+and+processes%29.pdf/4b842c7e-3294-4947-94cd-ad7f94405d66)

[9] For example, the "Weak" score has a moderately positive dimension (the plan can still be approved). It is therefore worth adding the 'unsatisfactory' score, in a situation where, for example, the presented plan is unrealistic and unacceptable.

[10] It is worth raising the question of whether the score should only look at capital and liquidity indicators. Perhaps other key indicators of the recovery plan should also be considered in the assessment process?

[11] For example, the methodology should indicate whether the 'Weak' score would automatically mean that the supervisory authority would not approve the recovery plan; and whether the 'Adequate with potential room for improvement' score means that, in the supervisory authority's opinion, the institution's recovery plan is credible and feasible or not.

[12] For example, a satisfactory score will be allocated where the application of the options included in the 'adjusted ORC' allows the bank's recovery indicators to reach levels above the limit set in accordance with the 'Guidelines on recovery plan indicators'. Does that limit mean the Red level, set as the sum of the regulatory limit and additional headroom? There are also concerns around the 'Adequate with potential room for improvement' score. Will it be assigned in a situation where, after the implementation of the options from the 'adjusted ORC', the Bank's recovery indicators do not reach levels above the limits under the 'Guidelines on recovery plan indicators' (i.e. Red), but they should still be higher than or equal to the regulatory requirements for the institution's capital, including leverage and liquidity, as referred to in paragraph 21, considering all the applicable regulatory buffers? So does this mean a situation where the achieved level is below Red but above the regulatory limit? So, in the case of the LCR, for example, would it be a situation where the LCR is 102% with the regulatory limit of 100%, and the bank's limit of 105%? Then, for that example LCR, would the 'Weak' score be assigned where the LCR is lower than the regulatory minimum of 100%?

dialogue there), or whether the bank will receive guidelines as to how to adjust the ORC calculation on its own.

The guidelines do not specify what is expected of institutions that have increased the ORC and have limited room for further measures in this respect, but that still fall short of the conditions for the ‘Satisfactory’ score in its current definition[13]. This may mean that institutions will come to different conclusions regarding the need to look for more radical solutions to improve the 'adjusted OCR' (e.g. a change of business model) in order to obtain the ‘Satisfactory’ score. The competent local authorities should clearly define the path to be followed in such a case. In particular, they should specify the conditions that will allow the ‘Adequate with room for improvement’ score to be maintained and approved by the competent authorities for a long time without taking any further measures.

The score should of course be communicated to the institution. Certainly, this is a suggestion that will increase transparency in communication between banks and supervisory authorities in the discussion on the possibility of effective self-recovery by the bank. The method of using the OCR score remains to be considered – it is not clear whether the score will be taken into account by the supervisory authority when determining supervisory activities towards the bank, whether it will affect the intensity of such activities, including, for example, the impact on the SREP score or the ability to pay dividends.

Question 8: Do you have any comments on the possibility to identify areas of improvement or material deficiencies related to the competent authorities’ assessment of the ORC?

Two issues in particular should be highlighted with regard to the areas of improvement related to the ORC assessment by competent authorities:

- Taking into account the principle of proportionality – in relation to small, less complex banks[14]
- Taking into account the specific nature of banks operating within an IPS – the draft guidelines prepared by the EBA seem to disregard the fact that pursuant to Article 4(8)(b) and Article 4(9)(b) of the BRRD, recovery plans – with the consent of the supervisory authority – can be prepared at the level of an institutional protection scheme (IPS)[15].

Finally, we would like to emphasise that – while we appreciate the importance and usefulness of developing and assessing recovery plans – the proposed procedures will significantly prolong the entire process. Already today (especially with the dynamic evolution of the macroeconomic and geopolitical environment), recovery plans are approved by the supervisor relatively late – in fact, the plans become outdated and the scenarios turn quite unlikely at the time of the implementation, which significantly reduces the usefulness of the 'recovery plan' tool as such.

The proposed guidelines are another regulation addressed to, among others, banks, which are already overregulated. The ORC assessment should be part of the supervisory process rather than an additional – compulsory – element of the Recovery Plan.

[13] For example, this applies to small institutions, such as car banks, with an extremely limited ability of self-recovery, but which nonetheless keep a safe capital and liquidity position.

[14] For example, it would be appropriate to specify the maximum number of options to be considered by smaller institutions.

[15] The recovery capacity of banks which are members of an IPS depends on the group recovery plan and the potential of a particular IPS to make a recovery loan to the specific bank.