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Association for Financial Markets in Europe

AFME consultation response

EBA/CP2022/15

Draft Guidelines on overall recovery capacity in recovery planning

March 2023

The Association for Financial Markets in Europe (AFME) welcomes the opportunity to comment on the EBA's consultation regarding draft guidelines on overall recovery capacity in recovery planning. AFME represents a broad array of European and global participants in the wholesale financial markets. Its members comprise pan-EU and global banks as well as key regional banks, brokers, law firms, investors and other financial market participants. We advocate stable, competitive, sustainable European financial markets that support economic growth and benefit society.

AFME is the European member of the Global Financial Markets Association (GFMA) a global alliance with the Securities Industry and Financial Markets Association (SIFMA) in the US, and the Asia Securities Industry and Financial Markets Association (ASIFMA) in Asia.

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Introduction

Firstly, we acknowledge the aim of these Guidelines, based on the EBA's own-initiative, to achieve a harmonized approach to the determination and assessment of an institution's overall recovery capacity (ORC). However, we believe the emphasis should be on identifying optimal recovery strategies for each bank e.g. recovery options selection and timings of execution, rather than to facilitate benchmarking / peer comparability to an exercise which should be inherently bank-specific in nature.

Furthermore, there are already relevant EBA GLs on related topics, such as:

i. EBA GL on recovery scenarios;
ii. EBA SREP GL;

All elements of the proposals relating to recovery scenarios and regulatory assessment should therefore rely on these existing guidelines and overlaps avoided.

The most problematic part is the new regulatory assessment and rating of the ORC: the ORC score assessments and benefits are not clear at this stage and we urge caution to inclusion in the SREP assessment given ORC assessments must be tailored to each banks specific profile, is highly dependent on the scenario chosen, and therefore is inherently not conducive to comparison or benchmarking.

We provide more detailed feedback in the remainder of this consultation response, but would like to emphasise the need for sufficient time to implement the expectations from these guidelines into recovery plans. Banks finalising their recovery plans soon after finalisation of the guidelines will not have had sufficient time to reflect the expectations into plans. This means banks with different planning cycles will be subject to an ORC assessment without being given the same opportunity to reflect expectations into recovery

plans. This fast track application creates not only a lack of time for incorporating novel approaches and thus, the risk of reduced quality in banks recovery plans, but it results also in an unlevel planning field for banks given the different deadlines of recovery plan submissions, As such, we recommend that the GL specify that the expectations apply to banks to the first full annual recovery planning cycle beginning after finalisation of the guidelines, i.e. the earliest in the recovery planning in 2024.

Consultation Questions

We provide responses to individual questions from the consultation below:

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

   In general, the list of requirements should be consistent with those set out in relevant articles of the Commission Delegated Regulation, e.g. on Feasibility Assessment and Impact Assessment of Recovery Options, and that these should either be cross-referenced or reproduced without making any changes or additions, e.g. level of preparedness, notwithstanding the specific comments below were the EBA list to be retained.

   The guidelines establish a non-exhaustive list of general qualitative requirements that institutions should take into account for their assessment of credibility and feasibility of the recovery options. As this is fundamental to the overall consideration of ORC, institutions would benefit from competent authorities discussing the assessment openly with the respective institutions and, ideally, agreeing on the assessment of credibility and feasibility of the recovery options.

   We have the following comments related to specific factors:

   Item a, page 24 : "The expected external impact on the key stakeholders as well as any anticipated impact of the execution of the recovery option on the financial system"

   This point must be clarified. The assessment of the recovery option impact on the financial system shall be made through the analysis of the continuity of Critical Functions.

   The financial system could be at risk if a business including a Critical Function (CF) is sold to an acquirer that does not have the capacity to ensure its continuity. Nevertheless, the probability of this would be extremely low as:

   - The acquirer's intent is normally to pursue the CF since it contributes to the value of the acquired business.
   - On its side the seller would most likely also assess the capacity of the acquirer to do so.
   - Furthermore, the acquisition of regulated businesses is subject to supervisory approval. The capacity of the acquirer to ensure continuity and to comply over time with regulatory requirements is thoroughly assessed by the supervisor approving the transaction.

   Item b, page 24 : "Past experience from the implementation of the recovery option by the institution or its peers provided there is available information"

   Reference to past experience may be useful to assess the credibility and feasibility of the recovery options but very few institutions have experienced recovery situations. In addition, when institutions experience recovery situations, this is generally not public information.

But in case of a recovery option consisting in a sale of business or entity, reference to similar, recent, M&A transactions performed by the institution itself or its peers would be appropriate.

Item g, page 25 : “Presence of any operational, legal, reputational and financial impediments as well as any other impediments to the implementation of the recovery option”

See answer to question 4.

2. **Do you have any comments on the specification of the scenario severity for the purpose of calculating the ‘scenario-specific recovery capacity’?**

‘Near default’ prescription (NDP) for scenarios

The scenario severity defined for capital purposes (i.e. the Total SREP Capital breach) is considered too harsh and would frequently lead to the simulation of unplausible scenarios, that will be more a rule than an exception to justify by institutions as provided in paragraph 22.

- For many banks, the kind of scenarios that would need to be considered would either require macro-economic shocks never seen for decades or some undetermined or arbitrary idiosyncratic shocks, both kind of scenarios being far from specific to the institution. This requirement seems to contradict the EBA guidelines on the range of scenarios to be used in recovery plans, which mention in p.3 : “the overriding principle remains that the scenarios should be based on the events and factors that are the most relevant to the institution or group”.

- Moreover, under this kind of scenarios, our members believe that the following objective of the scenarios as specified in EBA/GL/2014/06 “ to define a set of hypothetical and forward-looking events against which the impact and feasibility of the recovery plan will be tested”, will not be achieved. In fact, the assessment of the feasibility of recovery options under unplausible scenarios would be very hypothetical.

- This harsh threshold seems to be counterintuitive compared with the other supervisory requests and objectives. First of all, it is closer to a resolution scenario than a recovery one. Secondly, it would not be consistent with the “continuum”, or interplay, requested between ICAAP and Recovery, i.e. it would create a discontinuity, or gap, between activation of capital actions under ongoing management of business and activation of actions under recovery phases.

- Such a severity threshold could be an incentive for banks to be less prudent in the business as usual risk management (e.g. setting of recovery indicator thresholds, management buffers, etc.). It would create an unlevel playing field across banks, since banks with lower capital buffers would require scenario with lower severity (as compared to banks with higher capital buffers) and this might affect the assessment of recovery actions across banks.

- Even if reverse stress test is used in recovery planning, the plausibility of scenarios is generally considered relevant by the management in discussing and evaluating recovery plans as useful tools for crisis management, which reverse stress may not be.

The purpose of the Recovery Plan is to facilitate decision making by a given institution in the event of a stress event. If all capital driven stress scenarios that are considered in the Recovery Plan have the same level of severity, (i.e. Total SREP Capital or Leverage ratio breached) and the same characteristics, the

usability of the Recovery Plan is undermined. The Recovery Plan should instead, be assessed against a range of crisis types, so that if required, senior management and/or Board members have a menu of potential recovery strategies to refer to, dependent on the stress.

For the above reasons, we deem that a "one-size-fits-all" approach is not the most desirable in this case; the prescription of a specific level of capital breach should be removed, especially a prescription that would correspond to a resolution scenario. FSB guidance on recovery triggers and stress scenarios make a clear distinction between recovery plan scenarios and resolution scenarios, mentioning "scenarios used for recovery planning should be only "near-default", as the aim of recovery planning is to describe options to ensure and restore financial strength and viability when the firm comes under severe stress."

An alternative approach would be to define an acceptable "near-default" range (e.g. between TSCR and OCR) which guarantees (1) very severe scenario, but not totally unrealistic (2) continuum between ICAAP and recovery in terms of actions and processes, (3) internal usability of the framework.

EBA GLs on Recovery Plan indicators

This 'near default' requirement appears inconsistent with the last EBA guidelines on Recovery Plan indicators (2021), where it states that:

> ***45.Generally, capital indicators should be calibrated above combined capital buffer requirement.***

Thus it appears unrealistic to build a scenario which may cause entry into recovery when capital indicators are still above combined buffer requirement and which without recovery implementation and within a reasonable timeframe may decrease to levels below the TSCR.

This appears to be unrealistic both in slow-moving and fast- moving scenarios.

Again, highly diversified or highly capitalized groups have already to apply very severe shocks, often beyond plausibility, at the beginning of the scenario to force entry into recovery (even with recovery indicators thresholds fixed conservatively) and they cannot apply additional shocks later in the scenario, otherwise this would lead to a completely artificial scenario.

Given the high resiliency of several institutions in terms of capital position, the target of breaching TSCR or TSLRR cannot be plausibly achieved, at least for capital, with a series of events, although extreme.

The goal to build a plausible scenario is even more unfeasible considering the expected time-frame for the scenario deployment, that - although not explicitly recalled in the GLs - seems to be set at a maximum of 18 months (or much less in fast-moving scenarios) as per the illustrative graphs reported on pages 17 and 18 of the consultation document.

Flexibility

We welcome that some flexibility has been granted for institutions where it is recognized that that for certain type of institutions it may be extremely difficult to design a scenario while preserving a fully plausible setting and without adopting extremely very far-reaching assumptions, provided this is accompanied with an explanation in the related Recovery Plan. Note, this flexibility should also apply to liquidity scenarios. However, on page 36 the EBA GL further specifies that, "in such cases, it is anyway expected that the scenario should lead to the 'near-default' point and therefore be severe enough to allow the appropriate testing of the recovery plan assumptions". It is not clear therefore, how an institution can

agree the level of severity deemed adequate with the Authority, without being forced to perform adjustments as a result of a material deficiency assessment; this outcome would appear highly likely given that, from the bank's point of view, the impacts of the scenario cannot fall below a certain level (not necessarily corresponding to the NDP), since the plausibility of the scenario itself must also be preserved. As such, greater clarity is sought regarding how a firm can gain concession to develop a substitute to the NDP scenario and how the concession will be communicated by the Authority.

Reporting

Where an institution cannot define a stress leading to 'near default', the institution should be exempted from filling the part of the ECB SRT template related to the near default (unless this template is modified). A solution could be that under each scenario, institutions would report their financial positions, at points where the most relevant indicators for each scenario would be the most deteriorated if no recovery options were implemented.

Macroprudential considerations

There is a lack of consideration of the impact on macroprudential buffers; The MDA level should decrease during a period of stress due to a decrease of the countercyclical buffer. This would lead in parallel to a decrease in the overall capital requirement and as such to a decrease of the recovery indicator. Therefore, flexibility should be provided for adapted recovery indicators before a crisis, compared to during / after a crisis. Accordingly, the adapted (decreased) recovery indicator should be the target for reaching the overall recovery capacity.

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 'scenario-specific recovery capacity'?**

Starting point

The proposed starting point criteria would not be beneficial, given that it creates heightened complexities (for scenario selection, timing of recovery options etc.) and extends the assessment well beyond 12 months when also considering the initial phase in the run up of an indicator breach.

With regard to the starting point, the Guidelines assumption to use the breach of a recovery indicator as the starting point would lead to the exclusion from the ORC computation of Business as Usual management actions that would probably be put in place by a bank (or even suggested/requested by the Authorities) before the breach itself, as normal and sound risk management measures. This is in contrast to Article 8(4) and (5) of the Commission Delegated Regulation 2016/1075, "the full list of recovery options shall include both measures which are extraordinary in nature as well as measures that could be taken in the normal course of business".

> How do you cope with this potentially relevant "missing" ORC?
>
> If excluded, this would create incentive for banks not to perform any management actions before the breach in the recovery scenario simulations, so being not realistic in terms of real crisis management. If the starting point is the start of the scenario, it would be possible to take into account the BAU management actions in the ORC.

An alternative could be to use the point at which a firm first forecasts a breach, which would be well before breaching the first trigger point, as the starting point. We believe that the EBA could broaden their guidelines to include using a forward looking / forecast breach as the trigger point for beginning the calculation of 'scenario specific recovery capacity', rather than just an actual breach, as this may be more appropriate in some instances.

Clarification re combined scenarios

As a question, we seek clarification for the EBA with regards to the approach envisaged in the case of combined scenarios (capital and liquidity) in relation to the breach of indicators and the related ORC computation. In such scenarios, would a breach of capital indicator also start the Liquidity ORC computation? If this is not the case, banks would need to assume two different starting points for capital and liquidity in the same scenario which seems contrary to effective crisis management as a whole, where the expectation is to consider both capital and liquidity actions of each specific scenario. We suggest the EBA clarify that in combined scenarios the starting point for capital AND liquidity ORC is the first breach of a relevant indicator (whatever capital or liquidity indicator).

Timeframe

The EBA specifies on page 37 of the consultation that timeframe is specified as the maximum timeframe to take into account for the impact of the implementation of the recovery options over time, whilst under paragraph 25 of the consultation, 'maximum' is not stated. Our understanding is that the timeframe limits specified are the maximum timeframe for recovering capital and liquidity positions, and outline our positions below accordingly. If this is not the case, please clarify.

Applying a prescriptive timeframe for assessment of capacity does not enable sufficient consideration of differences between firms in relation to the stress scenarios used, assessment of 'sustainable recovery', differences in firms' business models and firms' risk appetites. In particular:

1. **Timing of Stress**: The consultation paper suggests using a scenario which causes the bank to breach its SREP requirements. Using Liquidity as an example, a realistic severe Liquidity stress will likely last a number of months. Capacity at 6 months is therefore likely to cover in a large part the 'stressed period'. Applying a degree of prudence to option assessments will lead to many meaningful Liquidity capacity options being considered unusable, driven by the underlying stress used. The capacity calculation will therefore be heavily influenced by firms approaches to defining options as 'viable' given the nature of the stress used (e.g. 1/3/6 month shock), all of which can vary firm by firm. A similar consideration would apply to Capital stresses, which often last longer than 12 months, meaning that the achievable recovery value may be depressed at that point.

2. **Time to generate benefit through sustainable options:** Our experience is that many Capital beneficial options take longer than 12 months to realise material financial benefit. Constraining the measure to 12 months would exclude many beneficial actions, meaning the capacity number will likely be informed by assessments of a smaller number of options, rather than demonstrate a firms breadth and depth of option capacity.

As such, whilst 6 months and 12 months for Liquidity and Capital respectively will not be appropriate for all. Whilst we recognise the need to maintain options available to manage stress in the very short term, over-reliance on short-term actions in our view may have a dis-proportionate impact on future viability

and sustainability which is a key component of recovery planning. If a generic timeframe is to be applied consistently without due consideration of the firm specific aspects then our view is that longer timeframes will provide a better view of the underlying capacity to rebuild Liquidity and Capital buffers in a sustainable way and will enable a more comparable view of capacity in light of a sustainable business model post-recovery (for example 12-months for Liquidity and 24-months for Capital). Alternatively, the ORC could be measured at several points i.e. short, medium and long term. This would provide a clearer view of ORC which would otherwise be missed with the proposed time limits. For instance, a bank (Bank A) with an LCR ORC of 50% at 6months, 90% at 12months and 150% at 18months would appear to be able to withstand a stress equally to another bank (Bank B) with a LCR ORC of 50% at 6months, 60% at 12months and 65% at 18months if limiting the timeframe to 6months and the relative strength of Bank A would never be visible.

We also believe the proposed focus on the shorter-term timeframes for a capacity measure also runs at odds with recent regulatory literature around the expectation of banks using their capital and liquidity buffers during stress, especially if short term measures are used to support SREP assessments.

Representative indicators

We agree with the identified representative indicators, and welcome the fact that MREL is not part of the list of 'relevant RP indicators' since we consider that it is irrelevant to monitor MREL in a recovery context, as it is mainly driven by market conditions rather than actual risk factors. However, it is crucial that whenever an institution adopts additional indicators in stress scenarios, the infringement of such additional indicators shall not be construed as insufficient ORC.

It should also be noted, that if the liquidity timeframe is not extended beyond at least 12 months as previously outlined, we believe that NSFR should be removed from the list of relevant representative indicators as it in not a short-term risk indicator. It is a long-term, structural indicator that can be settled after the recovery phase. It should not interfere with the recovery itself in our view.

In addition, in terms of reporting in the recovery plan and templates for ORC purposes, analysis should be limited to reporting on indicators that are breached in the specific scenario instead of reporting on all indicators, thus reducing the amount of data required and overall reporting burden for institutions.

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

The text proposes to calculate 'Scenario specific recovery capacities' where only a selection of recovery options (step 1) is used for the calculation of recovery capacity in a given scenario.

Final step determines an ORC range (step 4) on the basis of the recovery capacities calculated from the multiple scenarios developed in the RP.

Step 1

In Step 1 for Determining the ORC, the EBA has suggested that "Recovery options with low/limited probability of successful implementation" should not be included. As part of the selection of recovery options particular to a given scenario, banks assess the credibility and feasibility of options, ruling those out with low/limited probability of successful implementation for each given scenario and select only those options that are credit and feasible. As such, the options presented by a firm under each specific

scenario should de facto be available and appropriate. As such, we seek further confirmation that the EBA is not setting new expectations in this regard, and has paid due regard to the ECB 2022 RP SRT guidance:

58. […] The banks shall assess the maximum recoverability in each stress scenario. Please note that it is not sufficient to report only the recovery options that would be needed to restore the viability of the bank as the legal text asks for the full extent to which a bank could recover. It is known, that under realistic assumptions banks which could recover over and beyond the levels before the crisis would not do so as there would be no business case. On the other hand, it reflects that this institution has much more recovery options than just to barely recover, which reflects a higher resilience.

This specifies that the ECB has defined ORC as the measure of a bank's maximum recovery capacity at a given time, looking at all the options available specific to the scenario considered, and not only the few options that would be selected to restore the viability of the bank.

If the EBA was seeking to introduce a separate requirement regarding recovery options, the phrase "low probability of successful implementation" would need further guidance to ensure it is interpreted consistently and limit the level of inconsistency in the measure of ORC across firms.

Step 2

No comments for step 2 except as regards item d and item e on reputational effects and business model / profitability.

Item d : "Increased reputational effects – whether implementing several recovery options in combination could reduce their impact and lead to impediments or relevant reputational effects"

Indeed the potential constraining factor related to reputational effects is highly questionable: in a recovery situation, any effective and credible recovery action will be considered positively. Selling several subsidiaries is part of the constraints / strategy adopted.

The implementation of a combination of several recovery options might generate reputational effects and would modify the existing (pre-recovery) bank's business model. It is difficult to anticipate the effect of massive disposals, but cause and consequence should not be confused. Reputational risk would result essentially from the entry in recovery itself and the implementation of recovery actions may well be the visible sign of a crisis situation to the public, but it cannot be considered as a cause of the reputational risk.

Moreover, it should be noted that the market abuse regulation requires a listed bank to disclose without delay any material element that could impact its share price, meaning that in the case of a listed bank, the visible sign would be the announcement of significant losses or problems, not the activation of the recovery plan. Furthermore, adequate communication should help making the reputational effect of a clear and credible recovery plan positive. Anyway, the disposal of non-core entities should not pose any major reputational problem. Indeed, in such a context the bank's stakeholders would consider decisions aiming at restoring the bank's financial situation rather favorably. In any case, if a bank approaches recovery territory, its reputation will automatically be affected by the visible deterioration of its financial positions, noticeable in the market and by its counterparties; the more serious the crisis, the more serious the reputational issue. In such case, a clear and credible action plan commensurate to the crisis and executed consistently can only improve the reputation. On the contrary, the absence of such clear, visible and credible reaction would be extremely detrimental to the reputation in our view. Furthermore, it should also be noted that only a few options would often be sufficient to get out of extremely severe crises. Accordingly, the likelihood of numerous and massive disposals happening simultaneously is quite remote too. Bank's Crisis Communication Plans will also aim at minimising the bank's reputational risk. It would

logically insist on the decisiveness of the actions undertaken and their effectiveness in restoring the financial positions of the bank.

Finally, introducing reputational effects within the constraining factors is fundamentally inconsistent with overall recovery capacity concept and purpose, which is to measure the maximum recoverability, in a given scenario. But if we have to take reputational risks into account, then we cannot reconcile this with a principle of maximum capacity: indeed, realistically, we cannot, without creating reputational risk, activate a set of options that would have a far greater impact than necessary to recover and meet again the regulatory/supervisory requirements. Typically, in a pure liquidity scenario, if reputational risk were to be taken into account in its overall sense, it would disqualify capital generation options, because they would be likely to create reputational risk. Our proposal is therefore to exclude reputational risk so that this type of contradictory issue is avoided.

Item e : "Consequences to their business model or profitability when more than one recovery option that alone does not have a significant impact is applied together or sequentially with others (combined consequences)"

In an ORC calculation, the consequences on the viability of the bank's business model shall not be considered. As specified by the ECB, all the options available in a given scenario are to be considered and not only the options that would be the most suitable for this scenario (in particular by taking into account the consequences of the exercise of all options on the group's business model). The implementation of an ORC-type (i.e., maximalist and often widely over-reacting) strategy would of course have a significant impact on the bank's business model. This analysis is purely conventional for the purposes of the calculation; therefore, this element of viability of the business model should not be considered in the ORC methodology.

Step 3

The step 3 as presented in the example (page 13 and page 17) should be clarified: the manner the recovery capacity shall be computed has to be clarified because explanation provided in paragraph 25 and 23 are not sufficiently detailed. Indeed, when referring to the figure 12 page 17, it seems that the recovery capacity in terms of CET1 ratio is computed as the difference at a 12-month horizon (starting point being the breach of indicator as defined in paragraph 23) between :

- the CET1 ratio as observed on the CET1 ratio trajectory with implementation of recovery options (green line) and
- the CET1 ratio as observed on the CET1 ratio trajectory when no recovery options have been implemented (blue line).

This is clearly what the vertical blue arrow indicates but this is not explicitly confirmed elsewhere in the guidelines.

Indeed, the recovery capacity could also be calculated as the difference between:

- the CET1 ratio as observed at the starting point (value of the ratio at the time of the breach of the indicator); and
- the CET1 ratio as observed at a x-month horizon (after the starting point) on the CET1 ratio trajectory with implementation of recovery options (green line).

The results of these two methodologies differ significantly whereas both are dynamic as required in paragraph 31 (meaning that the level of the ORC at a given time horizon will be dependent on the strategy of recovery options implementation).

The calculation of the recovery capacity on a "dynamic balance sheet approach" on the capital and liquidity ratios implies that significant differences may result depending on which actions are prioritized. Unless the ORC is considered after all recovery options have produced their full effects, the order of implementation will have an impact on the ORC measured.

Apart from potential overlapping between the options - that should be cleaned in step 2 (considering mutual exclusivity and interdependencies) - the impact on the ratios of each implementable action in a specific scenario depends on the dynamic position of the numerator and denominator. The order of implementation of the actions reported in the recovery plan for maximizing the ORC calculated in such a way should represent non-binding strategic guidelines for top management supporting the implementation of the recovery plan.

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?**

Provided that this measure of the recovery capacity is based on the maximum number of recovery options compatible with each other and with the scenario (and is not limited to a selection of the most suitable), we have no remark on the determination of the ORC as a range between the highest and lowest scenario – specific recovery capacity, though we add a remark under Q8 regarding the consideration of parental / subsidiary support.

We welcome the footnote on page 16 which grants the possibility to institutions "to use a reference value for their recovery capacity under the application of no scenario (Business as Usual – Recovery capacity): i.e., the sum of the impacts of the list of credible and feasible recovery options under no scenario while also adjusted for mutual exclusivity between certain options and any other constraining factors". Such an ORC computation would be independent from scenarios, which are very hypothetical and ad-hoc constructions. It is in our view the only true measure of ORC in the actual meaning of the term.

Interlinkages

A clear distinction between capital and liquidity scenarios might not always be possible due to their interlinkages, therefore it should be clarified that whilst the focus might be on capital or liquidity in some scenarios, there might still be an impact on the other (just not a material one).

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

As a general principle, the elements to be considered by the Authorities to assess the institutions' ORC (e.g. par. 35-36-37) should be more concrete (e.g. indicators / metrics / criteria of feasibility of actions to be met by institutions defined in advance), in order to allow institutions to better understand the goals to achieve when setting preparatory measures to improve the feasibility of their recovery actions.

In terms of the assessment of feasibility and application of haircuts, we provide the following comments:

1. We consider that, subject to realistic values and implementation timelines, all the options presented in a recovery plan are feasible.

Indeed 'feasibility' is an intrinsic quality of the options selected under any scenario. For the purposes of the plan, a certain number of options assessed as relatively easy to implement is selected (and not a maximum number of options with very uneven degrees of feasibility). The valuations and implementation timelines (in benign and stressed contexts) retained take already into account all the identified potential issues that could impact their implementation. At these valuations and within these implementation timelines, all the recovery options presented can be considered "highly feasible".

2. We disagree with the application of haircuts, which can only be subjective.

Reference to peer group analysis to calibrate these haircuts does not appear to be appropriate either as suggested by paragraph 38. In particular item c, "cross-institutional comparison of the expected time required to implement a recovery option" does not appear relevant. Some banks may have developed in-house M&A expertise and have a proven track-record in acquiring and integrating or selling and disentangling parts of their businesses while other may not and would require long learning and important external support to do so. In addition, banking groups have different organizational structures, some of which would help to facilitate the implementation of options and some other rendering the same type of options less easy to implement sufficiently. These characteristics can hardly be taken into account in the calibration of the haircut if made by reference to peer group. Especially for relatively large groups, a case by case analysis is the only one that would make sense.

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

ORC Score

Assessment of ORC

The ORC score assessments and benefits are not clear at this stage, and we believe that the "adjusted ORC" should not be included in the SREP assessment given the lack of comparability across banks. The ORC score must be tailored to each banks specific profile, taking into account, for example, the variety and extent of the recovery options by category, type of business, geographic dispersion etc. as key elements in assessing the capacity of a given banking group to recover from a deep crisis. All these elements cannot be summarized in a single figure. We believe this approach is necessary, but also means that the score is not conducive to comparison or benchmarking.

In terms of setting the adjusted ORC, it should not always be equal or lower than the firm's assessment. The EBA Guidelines state on page 41, that competent authorities' 'adjusted ORC' should be either lower or equal to the ORC determined by institutions. Indeed, this approach could lead to incentives for banks to be less prudent in the choice of actions and/or in the feasibility assessments. As such, we consider that power should be left to the Authorities to potentially increase the ORC of the institutions, in order to improve level playing field and increase homogenization of criteria, for example in situations where the comparison with peers show that a bank has been too conservative (and should not be penalized for that).

In terms of feedback from competent authorities, all quantitative and qualitative adjustments made by the authorities in assessing the ORC should be explicitly disclosed to the institutions with sufficient level of detail in order to be concrete and allow institutions to clearly understand the rationales and the feasible actions to enhance the ORC. Vague comments should be avoided as they are not conducive to better recovery planning.

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?**

   We would emphasise our previous comment that the assessment of the ORC can only be a case by case exercise for large banking groups and warn against mechanical comparisons / benchmarking.

Other Comments

Page 22, Article 8

For institutions that are part of a group subject to consolidated supervision pursuant to Articles 111 and 112 of Directive 2013/36/EU, these guidelines apply at the level of the Union parent undertaking and at the level of subsidiaries.

This requirement should not apply to Groups with a Single Point of Entry resolution strategy.

For those Groups, only the Resolution entity should be subject to such ORC assessment.

Indeed, large and diversified banking Groups have the ability to overcome severe problems in particular geographies or business lines thanks to their geographical spread and diversity of businesses. It is, by nature, the role of the head of the group to allocate support and resources where and when necessary amongst its subsidiaries. As a consequence, it is best placed to both document and maintain the Recovery Plan and to implement it were this to be required.

Parental / Subsidiary Support for subsidiaries of third country banks

For institutions that are not part of a group subject to consolidated supervision in the EU, in particular subsidiaries of third country banks, the ORC does not give a full view of recovery options without consideration of parental support. In this regard, it is important that the EBA considers, and has a view on, how such support is incorporated in the ORC assessment. Our view is that where a Parent has established a committed facility or an unconditional letter of support to a Subsidiary, this value should be included in the calculation of a subsidiary's ORC.

It is important to note that firms (i.e. subsidiaries) that are part of a group may have a reduced capacity compared to those firms which are parent companies, and as a result the ORCs would not be comparable. This is especially true where committed parental support arrangements are not in place and a subsidiary has no external options, such as rights issuances / access to funding markets. This inconsistency must be factored into the assessment of ORC.

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