
Consultation response

EBA Consultation Paper on Draft Regulatory Technical Standards on the Content of Recovery Plans (EBA/CP/2013/01)

11 June 2013

The Association for Financial Markets in Europe (AFME) welcomes the opportunity to comment on the European Banking Authority (EBA) Consultation Paper (CP) on Draft Regulatory Technical Standards on the Content of Recovery Plans.

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. Its pan-European membership allows AFME to draw upon the expertise, diversity of business models, cultures and experiences found within its member firms.¹

AFME has been strongly active on resolution issues for a number of years and has played a leading role in the industry efforts, at European and global level, aimed at achieving effective and credible recovery and resolution frameworks.

We set out below our high-level response to the consultation, which is followed by answers to the individual questions raised.

Executive summary and general comments

AFME is broadly supportive of the scope of the draft RTS on the content of recovery plans. However, we have the following general comments in response to the CP:

- It should be borne in mind – and reflected in the text – that it is of the essence of recovery plans that they are a management tool to be designed and utilised by incumbent management ahead of the point of non-viability.
- Accordingly, the content of recovery plans should be focused on information relevant to practical actions management could take to ensure recovery, as distinguished from resolution planning. Recovery planning should be focused on the preservation of capital and liquidity rather than on maintaining critical functions.
- The content of recovery plans required by the RTS should recognise the need for flexibility to adapt recovery plans to the specific characteristics of the relevant group. The contents should therefore not be overly prescriptive and enable firms to develop a

¹ 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. AFME is listed on the EU Register of Interest Representatives, registration number 65110063986-76.

recovery plan that fits the relevant legal and operational structures and business model of each firm. We suggest that this principle could be acknowledged in a recital.

- Recovery plans should be flexible in order to be able to adapt to a range of potential situations, rather than addressing specific scenarios.
- Recovery plans should not contain hard triggers that result in a particular course of action being taken.
- There should be no requirement for a separate recovery plan for each entity in a group which in most circumstances would not reflect the way groups are funded and would duplicate cost.
- The importance of confidentiality should be recognised, as much of the recovery plan includes very sensitive information. We urge authorities to put in place arrangements to ensure confidentiality within authorities and colleges.
- We support the inclusion of recital (4) which emphasises the need to take a proportionate approach to recovery planning.

We acknowledge that the EBA is constrained by the level 1 text in some of these areas, but as much emphasis as possible should be provided in the RTS.

Questions

Q01. Have you already drafted/approved a recovery plan or are you in the process of doing so? Is your recovery plan in line with the contents of the draft RTS?

Members of AFME have already carried out extensive work preparing recovery plans in accordance with national legislation. This has involved substantial resources and the work already done should to an extent be capable of meeting the requirements under the draft RTS. However, existing recovery plans do not generally provide the level of detail set out in the RTS which is relevant to resolution planning as opposed to recovery planning (see our comments below). As a general principle the EBA should, as far as possible, minimise divergences from the existing global recovery planning regimes to avoid duplication of work that has already been done.

Q02. Do you believe that the draft RTS on recovery plans is comprehensive and contains sufficient and relevant requirements to enable a timely and effective recovery of an institution in the event of financial distress?

The draft RTS is generally comprehensive. However, it provides a greater level of detailed information than should be required for the purposes of recovery planning. It is necessary to distinguish the recovery planning exercise from the information to be provided to resolution authorities for the purposes of resolution planning.

The proposed requirements for descriptions and detailed information on, for example, the structure, funding strategy, critical functions and interdependencies set out in Article 6(3) should be limited to information that is relevant to that particular firm's recovery plan. For example it should cover the interdependencies of an area of business which is planned to be disposed of, as opposed to a general description of all interdependencies within the group. Including interdependencies which are not relevant to a firm's recovery plan will clutter the plan with, potentially very extensive, unnecessary information. We note that the need to focus on relevant information is recognised in article 4(b) of the draft RTS on the assessment of

recovery plans (CP/2013/08) and this principle should also be applied to the requirements for the content of recovery plans.

In particular the draft RTS provides considerable focus on firms identifying critical functions² and assessing the external impact and systemic consequences of each recovery option.³ The focus of recovery plans should be on options for the recovery of institutions rather than the maintenance of critical functions.

Q03. Please provide your views on the indicators and escalation process as stipulated in the draft RTS under Articles 2(2)(a) and 5(c), and on the other governance arrangements provided for by Article 5.

The proposed requirement for recovery plans to include indicators should not reduce the flexibility of recovery plans by introducing hard triggers that would lead to actions being taken without due consideration by the institution. We strongly support the statement in draft recital (6) that “indicators should not automatically activate a specific recovery measure or, more generally, prompt an automatism such that a particular option has to be implemented ...” and the emphasis placed on indicators suggesting only that an internal escalation process should be started. Any “hard-wiring” of actions to be taken when indicators are met could lead to ineffective and/or inappropriate responses to a particular situation. We are concerned that the reference to determining “which specific recovery option it may need to apply” in the definition of “indicators” could be read as a requirement to link specific recovery options to specific situations.

Any indicators should be set by the institution as part of its governance framework as they will need to be tailored to the relevant institution. The indicators should focus only on threats to capital and liquidity. We are also concerned by the requirements to inform the competent authorities that indicators have been reached. Reaching an indicator will not necessarily imply that the viability of the bank is in question, rather that its viability could be brought into question if further monitoring and escalation does not take place. Requirements to report reaching all indicators could therefore be unnecessarily burdensome without providing the competent authority with useful and meaningful information.

In relation to the other governance arrangements in Article 5, we suggest the removal of the reference to external auditors in Article 5(b)(1). We are unsure as to what value this would add to the process and external auditing of recovery plans should not be a requirement. We also suggest that it would be better to refer to the titles of the positions of the relevant individuals responsible for the preparation of recovery plans and the governance arrangements in Article 5 rather than referring to named individuals because staff frequently change and the responsibilities are better attached to a particular position than a particular individual. Finally, in Article 5(d) we suggest that it would be more appropriate to refer to “management information processes” rather than “management information systems” as the latter could suggest a focus on technology rather than governance processes.

Q04. Please provide your views on the relationship between the governance arrangements provided for by Article 5 and current risk management processes/governance arrangements such as the Internal Capital Adequacy Assessment Process (ICAAP) and the Internal Liquidity Adequacy Assessment Process (ILAAP).

There are strong links between the governance of recovery plans and business-as-usual risk management processes and governance arrangements. We broadly support the governance

² Article 6(3)

³ Article 6(5)(b)(2)

requirements in the draft Article 5 and agree that the recovery planning process should form part of risk management and governance arrangements. However, it should be kept in mind that ICAAP and ILAAP outline the framework for monitoring and responding across capital or liquidity events which may vary from those arising in day to day prudential management through to severe stress scenarios.

Q05. Please provide your views on the requirements for the description of the institution or group, as stipulated by the strategic analysis in the draft RTS under Article 6(3).

We are concerned that the draft RTS provides a greater level of detailed information than should be required for the purposes of recovery planning. Please see our comments in response to question 2 above.

In addition we query what is intended to be covered by the reference to “capital flows” in Article 6(3)(c)(2) in this context.

Q06. Please provide your views on the requirements for the recovery options, as stipulated by the strategic analysis in the draft RTS under Article 6(4). Does this requirement comprehensively and adequately capture the different categories of recovery options that could be considered?

We are broadly supportive of the proposals in Article 6(4). We assume that this question was also intended to cover Article 6(5) and therefore we address this Article here. Please see our comments in our response to question 2 above. In addition, we set out below some specific comments on Article 6(5).

The principle of proportionality, as recognised in recital (4), should be reflected in the requirements in Article 6(5).

The recovery plan should not be focused on maintaining “critical functions” as set out in Article 6(5)(a)(1) but rather restoring the capital and liquidity position of the institution. Similarly analysis of the impact on shareholders, customers and counterparties might be difficult for a firm to ascertain. Article 6(5)(a)(5) also goes beyond existing requirements for recovery planning by requiring firms to cover the voluntary restructuring of liabilities.

In relation to the requirement for an impact and feasibility assessment for each recovery option, no timeframe is set over which the impact is to be assessed.

Q07. Please provide your views on the requirements for the communication plan, as stipulated in the draft RTS under Article 7.

We support the draft requirements for the communication plan in Article 7, although a single plan should be sufficient and we do not believe it should be necessary for the recovery plan to include a communication plan for each recovery option. We do not believe it is helpful to set out in the RTS a list of external parties to whom information must be communicated; rather the communication plan should be flexible to deal with a variety of situations.

The communication plan must be clearly defined as communication to the public in a recovery phase. Any communication ex ante of any part of the plan must be excluded.

We are concerned about the confidentiality issue posed by the communication of the plan to a large number of persons within multiple supervisory bodies. The unintended communication of parts of the plan to the public could have a very detrimental impact on the bank. Therefore we urge supervisors to devise and promulgate arrangements which can ensure access is limited to

identifiable persons, each subject to formal confidentiality obligations, and on a need-to-know basis.

Q08. Please provide your views on the requirements for preparatory measures, as stipulated in the draft RTS under Article 8, providing in particular your views on the question what types of preparatory arrangements or measures could or should be taken into account in the analysis of the recovery plan.

The recovery plan should demonstrate how each recovery measure can be implemented in a timely manner. No further preparatory measure should be required.

Q09. Do you agree that some of the costs of preparing recovery plan are already incurred by the requirements of having a proper risk management framework?

We agree that a proper risk management framework would involve some of the costs of recovery planning.

Q10. Could you indicate whether all the main drivers of costs and benefits have been identified? Are there any other costs or benefits missing? If yes, could you specify which ones?

The main drivers of costs and benefits have been identified. However, if there is insufficient flexibility for firms to develop the recovery plan most appropriate for the legal and operational structure, whether that plan is at group level or entity level, this could also create additional costs.

Q11. Do you agree that, for an institution, the costs of producing a recovery plan are likely to be proportional to the size/complexity of the firm and so of the costs its failure may create? If not, could you explain why?

The costs are likely to be to a large extent proportional to the size and complexity of the firm, although this is not necessarily the same as the costs its failure may create, which could also depend upon external factors.

Q12. Do you agree with our analysis of the impact of the proposals in this CP? If not, can you provide any evidence or data that would explain why you disagree or might further inform our analysis of the likely impacts of the proposals?

Yes, we agree.

Thank you once again for the opportunity to provide comments on the CP. Should you have any questions or desire additional information, please do not hesitate to contact Oliver Moullin at oliver.moullin@afme.eu or on + 44 207 743 9366.

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