

7 August 2014

European Banking Authority
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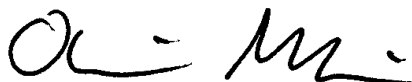
Consultation paper on draft guidelines on the types of tests, reviews or exercises that may lead to support measures

Dear Sir / Madam

Please find enclosed AFME's response to the EBA Consultation Paper on draft guidelines on the types of tests, reviews or exercises that may lead to support measures under Article 32(4)(d)(iii) of the Bank Recovery and Resolution Directive (EBA/CP/2014/17).

Please do not hesitate to contact us if you have any questions.

Yours faithfully



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Consultation response

EBA Consultation Paper on draft guidelines on the types of tests, reviews or exercises that may lead to support measures under Article 32(4)(d)(iii) of the Bank Recovery and Resolution Directive (EBA/CP/2014/17)

7 August 2014

The Association for Financial Markets in Europe (“**AFME**”) welcomes the opportunity to comment on the European Banking Authority (“**EBA**”) Consultation Paper (“**CP**”) on draft guidelines on the types of tests, reviews or exercises that may lead to support measures under Article 32(4)(d)(iii) of the Bank Recovery and Resolution Directive (the “**BRRD**”) (EBA/CP/2014/17).

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.¹

We set out below our comments in response to the CP.

General comments

Support measures should not undermine the recovery and resolution framework

One of the key principles underpinning the recovery and resolution framework under the BRRD and the FSB Key Attributes of Effective Resolution Regimes for Financial Institutions (the “**Key Attributes**”), is that losses should be borne by the shareholders and creditors of banks and that public funds should not be used for solvency support. As required by the Key Attributes, effective resolution regimes should “not rely on public solvency support and not create an expectation that such support will be available.” It must be ensured that the exception from the resolution trigger for extraordinary public financial support under Article 32(4)(d) of the BRRD does not undermine this important principle. The guidelines under Article 32(4)(d)(iii) should therefore be carefully framed to ensure that the resolution framework is not undermined.

In particular, we strongly support the EBA’s emphasis in paragraph 8 of the CP that none of the other conditions for resolution in Article 32(4) of the BRRD may be present for the carve-out under Article 32(4)(d) to apply and the inclusion of paragraph 8 of the draft guidelines. For example, if the outcome of a review is that a bank does not meet its minimum capital requirements, it is likely to be failing or likely to fail under Article 32(4)(a) and should be wound up or, assuming that the other conditions for resolution are met, placed into resolution.

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.

We also strongly support the requirement in paragraph 14 of the draft guidelines for any capital shortfall to be met through private means. Exercises should be designed to provide banks with sufficient time to carry out a plan to restore their capital ratios, including implementing their recovery plans where appropriate, taking into account the impact of requirements on other banks arising out of the exercise. The possibility of multiple banks having to raise large amounts of new capital concurrently within a short timeframe should be minimised through the design of the process and providing sufficient time for banks to remedy any shortfalls. The timeframe provided in the test, review or exercise should accordingly provide an adequate period in which any capital shortfall can be met through private means and this could helpfully be added to the guidelines.

The guidelines on the types of tests, reviews and exercises that could give rise to such public support should also clearly define the scope of such tests, reviews and exercises. The guidelines should clarify that the “tests, reviews and exercises” referred to are “stress tests, asset quality reviews or equivalent exercises” as referred to in the third subparagraph of Article 32(4)(d) of the BRRD. It should be ensured that the exception in Article 32(4)(d) could not be used to avoid putting a firm into resolution.

We support the requirements set out in the draft guidelines for a timeline, predefined scope, common methodology and time horizon or reference date.

However, some additional criteria could helpfully be added. For example, the definitions of “tests” and “reviews” in the draft guidelines include tests or reviews that could apply to a single institution. We fear that this could enable an authority to announce a “review” of a single institution for the purpose of avoiding putting it into resolution. While paragraph 11 of the draft guidelines is helpful in this regard, we suggest that the risk could be further reduced by limiting the definitions to tests and reviews that apply to a minimum number of institutions and/or reflecting the requirement for its scope covering a material sample of institutions in the definitions of “tests” and “review”. Alternatively, the limitation included in the definition of “exercises” to cover only tests or reviews coordinated at an EU level could be applied to the definitions of “tests” and “reviews”.

We also suggest that it would be helpful to clarify in the guidelines that supervisory assessments and reviews in the course of the ordinary supervisory process such as the Supervisory Review and Evaluation Process and Pillar 2 assessments should not be classed as tests, reviews or exercises for the purposes of Article 32(4)(d).

Finally, we suggest that it is clarified that a “test” or “review” should include a public announcement of the results. A deadline for publication is referred to in paragraph 10 of the draft guidelines, but the requirement for publication could helpfully be clarified.

Specific questions

1. Do you agree with the definitions provided by the Guidelines for tests, reviews and exercises?

As discussed above, we propose that the definitions of “tests”, “reviews” and “exercises” are amended to clarify that they refer to “stress tests”, “asset quality reviews” and “equivalent exercises” and that the definitions of “tests” and “reviews” should not include tests or reviews that are applied to a single institution. This could be achieved by deleting the wording “an institution or” in both definitions. We also suggest that these definitions be limited to include only tests or reviews coordinated at an EU level, which would be consistent with the definition of “exercises”.

2. Do you think that the draft Guidelines list all the correct elements to identify tests and reviews, or do you think that any elements are missing and/or other areas and features should be covered?

We are broadly supportive of the elements included in the draft guidelines including the requirements for a timeline, predefined scope, methodology and time horizon or reference date. As discussed in our general comments above, we propose that the materiality requirement for the scope of a review or test should be strengthened. We also suggest that the guidelines should clarify that supervisory assessments and reviews in the course of the ordinary supervisory process such as the Supervisory Review and Evaluation Process and Pillar 2 assessments should not be classed as tests, reviews or exercises for the purposes of Article 32(4)(d). Finally, we also propose that additional reference is made to the tests, reviews or exercises including an adequate timeframe to enable any capital shortfalls to be remedied through private means and requiring publication of the results.

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