AFME response to EBA Consultation Paper on "Recommendations on the coverage of entities in a group recovery plan" (CP/EBA/2017/03)

2 June 2017

Dear Sir/Madam,

The Association for Financial Markets in Europe (AFME)[1] welcomes the opportunity to comment on the EBA's consultation paper regarding the coverage of entities in a group recovery plan.

AFME has consistently supported the development of an effective recovery and resolution framework, including efforts to put in place credible group recovery plans that enable banks, and their consolidating supervisor, to implement and manage a bank recovery effectively, without systemic disruption or exposing taxpayers to loss.

We also support the EBA objectives to reduce the requirements for specific legal entity recovery plans as they duplicate recovery actions initiated at group level or could create confusion between priorities at a time of a crisis between legal entities' plans and group plans.

We support the current approach set out in article 8 of the BRRD regarding the coverage of entities in recovery plans. Overall, we do not think it is realistic and practical to require banks to subsume all group and locally relevant entity recovery plans into the group plan where these exist. Doing so would not increase the quality of the group recovery plan; on the contrary, it will undermine the credibility of the group plan given that banks are striving for a usable document that a bank's management can use when the group is in a crisis. For this reason the group recovery plan document should be kept sharp and focused. Including too much group and locally relevant entity specific materials that do nothing to enhance the credibility of the group's plan as a whole will undoubtedly compromise the overall usability of the group recovery plan. We believe that an open dialogue with the consolidating supervisor, that balances usability and credibility and serves to identify particular areas where the group plan would benefit from including information on group relevant and locally relevant entities (e.g. the deployment of group level recovery options that impact at a legal entity) is a more sensible approach than the recommendation proposed.

There is also a complicating factor for large banks with global operations outside of the EU – particularly G-SIBs – in that if implemented this recommendation would require group plans to include group relevant legal entities based outside the EU, where the relevant recovery and resolution planning regimes may be different. Where this results in local entity plans that don't mesh particularly well with the group plan, rigidly enforcing the EBA recommendation would result in an internally inconsistent document.

The EBA should also take into account banks' business models (centralized – decentralized), their resolution strategies (SPE – MPE) and their cross-border dimension (subsidiaries located in the EU – entities located in the same Member State of the parent company – subsidiaries located in both the EU and third countries) and their shareholding structure (wholly-owned subsidiaries –

[1]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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subsidiaries participated by significant third-party shareholders – listed). Achieving a level playing field is paramount.

Moreover, we believe the EBA proposal is not warranted by the recovery planning provisions in the BRRD or by the policy objectives of effective group recovery planning.

In line with our above-stated views, we answer below the questions put forward in the EBA consultation paper.

1. Do respondents agree with the level and width of coverage for entities identified as group relevant?

AFME does not think entity-specific indicators should be included in group recovery plans where these do not identify risks at the group level. EBA-GL-2015 on recovery plan indicators states that "*recovery plan indicators of a group recovery plan should be applied at group level*"[2], only allowing competent authorities to request indicators for individual subsidiaries on the basis of group structure and subject to proportionality. We therefore deem the recommendation within the EBA consultation paper a contradiction of this existing guidance. We also think that it should be possible for the group recovery plan to explain in general terms how entities are supported and how the group support functions, rather than documenting escalation plans for each entity.

In terms of scenarios, we agree that it is not necessary to have separate scenarios for group relevant entities where the group scenarios are already comprehensive enough and cover core business lines and critical functions.

The coverage of recovery options in the consultation is reasonable. We agree that the impacts to critical functions and how to preserve these critical functions should be included when disposal options are included in group recovery plans. We also agree that significant impacts to legal entities when executing group recovery options should be highlighted in the group recovery plan. Nevertheless, we believe there may be some options that are credible and effective at legal entity level, but they should not be included in the group recovery plan if they are entity specific and will not enhance the group's ability to recover from a severe but plausible stress.

Furthermore, the inclusion of group and locally relevant entities' indicators and scenarios should not be required where the relevant entity is located in the same Member State as the parent undertaking. Current supervisory decisions show that there is no need for additional regulatory burden when the relevant entity is located in the same Member State as the parent company because the consolidated authority will already have a good understanding of these entities.

The requirements should be revised for decentralized entities with MPE resolution strategies. Decentralized banks are legally unable to include in their group recovery plan measures to be taken by the parent entity on behalf of their resolution entities/ subsidiaries. For example, the board of each subsidiary of an MPE bank, where independent directors may sit, have a fiduciary duty to the company's various stakeholders (even more relevant when those subsidiaries are not wholly-owned). The parent entity has no legal authority and cannot decide on its own on the recovery plan of the subsidiary or on the measures to be applied by the subsidiary (e.g. the sale of one of its subsidiaries' loan portfolios). Such decisions must be taken at the level of the subsidiary.

Therefore, the requirements on governance, indicators and options regarding coverage of entities identified as group relevant for MPE resolution strategy groups should either:

- Be waived for decentralized entities with independent and autonomous subsidiaries and with an MPE resolution strategy.

[2] EBA – Final report, Guidelines on the minimum list of qualitative and quantitative recovery plan indicators – 6 May 2015, page 28
https://www.eba.europa.eu/documents/10180/1064487/EBA-GL-2015-02+GL+on+recovery+plan+indicators.pdf

- Alternatively, the group recovery plan for these type of entities should merely represent the aggregation of the recovery plan for the parent entity and the corresponding recovery plans of each of the subsidiaries which could be included in an annex and approved by the competent management body of each subsidiary (as explained, the parent bank's board would not be legally authorized to do so), provided they are correlated, aligned and fully consistent with the group corporate policies and the group recovery plan but taking into consideration the limitations described above.

Finally, the EBA should clarify if certain types of non-bank entities such as operative entities, SPVs, fintechs, etc. should be included in the group recovery plan. If they need to be included because they are relevant for the group, more guidance on the level of detail in the coverage requirement of those entities is needed.

2. Do respondents agree with the level and width of coverage for entities identified as locally relevant?

Similar to our comments in question 1, we do not think it will enhance the quality of the group recovery plan by the including of entity-specific indicators. Group processes may well trigger before an event is visible at the legal entity level. In particular, simulation of specific local entities indicators should not be required in the stress scenarios as this would de facto require the development of entity specific stress tests.

We understand that the scope includes all the entities identified as locally relevant and based in the EU. This requirement should take into account the resolution strategy of the entity and the existing requirements for non-EU entities to elaborate recovery plans in accordance with their national law. For example, in the case of an MPE bank headquartered in the EU, the group recovery plan should not include indicators and measures regarding subsidiaries located in the EU of a resolution entity based in a third country.

3. Do respondents agree with the level and width of coverage for entities identified as not relevant for the group and not relevant for the local economy/local financial system?

No, we believe that banks should not be required to list all their entities nor comment on entities deemed not relevant or material to the group, local economy or local financial system. This requirement would encompass potentially hundreds of entities for large groups, and in light of their irrelevance to the group, local economy, or local financial system, it would not be proportionate for such an exercise to be required.

4. Do respondents agree with the monitoring process envisaged in section 7 and with the transitional phase envisaged in paragraph 11?

The recommendation (paragraph 50) indicates that *"the consolidating supervisor and the competent authorities involved in the joint decision process…should not address coverage shortfalls of the group recovery plan … by requesting the submission of individual plans for group entities inadequately covered"*.

Firstly, this contradicts BRRD Article 8 (3) which states that *"in the absence of a joint decision between the competent authorities within four months of the date of transmission on: (a) whether a recovery plan on an individual basis is to be drawn up for the institutions under its jurisdiction; or (b) the application at subsidiary level of the measures referred to in Article 6(5) and (6); each competent authority shall make its own decision on that matter."*[3] We therefore deem the

[3] Directive 2014/59/EU – Bank Recovery and Resolution Directive (BRRD) – 15 May 2014, see page 38, Article 8 (3) http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32014L0059&from=en

recommendation within the EBA consultation paper a contradiction of this existing provision within the BRRD.

Secondly, we do not believe that all local authority concerns in relation to entity specific local recovery planning matters should be addressed through the group recovery plan. The purpose of the group recovery plan is to ensure the group as a whole can recover in a crisis, whilst incorporating local recovery planning information will likely compromise the usability of the group plan. Local regulatory concerns can and should be addressed by other means, such as through specific individual entity information and supervisory requests.

Thirdly, if competent authorities of legal entities decided not to apply paragraph 50, it may result in having to prepare three recovery plans for certain jurisdictions: the group plan, the local plan required by the local authority, and the adaptation of the local plan to the group plan. This will significantly increase resource utilisation for the bank with no corresponding value added from a group recovery planning perspective.

Fourthly, the proposed timeline for the implementation of the recommendation conflict with the 2017 timeline of the refresh of the 2017 Group recovery plan. We suggest the recommendation be applicable from 1 January 2018.

As a final point, it is unclear how third country competent authorities will be involved in this matter. In particular with regard to large banks with global operations whose presence is primarily outside the EU, it will likely be challenging, and questionable, for the competent authority of the parent to assess the quality of local recovery plans subject to the regulations of different jurisdictions. In addition, the suitability of sharing non-EU entity specific information with EU regulators other than the competent authority of the parent, given the joint decision process, will be questioned by third country competent authorities.

We welcome any questions or views you may have on this response and we are very happy to discuss these issues further.

Yours sincerely,

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