



The ESBG's response to the EBA's consultation on Draft Regulatory and Technical Standards (RTS) on the content of re- covery plans (CP-2013-01)

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General comments

On international as well as on national level in several Member States initiatives have been launched on recovery and resolution planning. Henceforth, the EBA has published its proposals for possible regulatory and technical standards (RTS) concerning the establishment of recovery plans, although Art. 5 (7) and 7 (4) of the Commission's proposal for a directive establishing a legal framework on recovery and resolution of credit institutions (RRD), which ought to be the legal basis for the draft RTS, have not yet passed the legislative process.

We have concerns about developing RTS at such an early stage before there is a finalised legal framework. Even if it is taken for granted that the finalised legislative text of the RRD contains a mandate for EBA to develop RTS for recovery planning, there are important aspects of the ongoing discussions in the European Parliament and the Council that should be taken into consideration.

In fact, the negotiation position which the Committee of Economic and Monetary Affairs (ECON) approved on 20 June 2013 as well as the latest compromise texts of the Council contain simplified obligations for institutions with regard to the threat their failure can cause for domestic or international financial markets. The upcoming discussion gives reason to assume that this aspect will also become an important point in the trialogue. Such a gradation in content und detail is essential to comply with the principle of proportionality.

Unfortunately the RTS draft does not correspond with these developments. With respect to Art. 1 RTS the proposed regulations are defined as "minimum information" which should be contained in every recovery plan, although requirements are obviously tailored for institutions that are of systemic importance for financial markets (please see also Q2).

Additionally, certain aspects are discussed which – if recognised in the finalised regulation – would require changes to the RTS at a later stage.

For example, the Council's latest RRD compromise text contains a waiver for institutions which can be resolved under ordinary insolvency proceedings without significant negative impacts, especially on financial markets or other institutions due to their size, business model etc.

Also, according to the proposal of ECON under Art. 5 (1a), consideration is being given to the question of whether Member States may delegate the task of drawing up recovery plans to an institutional protection scheme (IPS). According to this proposal, the IPS is permitted determine the measures to be taken by the institution or the IPS itself in a crisis situation. According to the intent and purpose of the arrangement, these are standard plans which stipulate on a binding basis the early intervention measures to be taken by the IPS for the institution concerned. The present requirements of the RTS could not be directly applied here.



Finally, the RTS evidently assume that, in addition to group recovery plans, recovery plans will also need to be prepared for the individual institutions belonging to the group. This contradicts the status of the discussions both at ECON and in the Council. Quite rightly, neither of the compromise texts provides any longer for such a duplication of work. Such individual recovery plans are only considered advisable where an authority of another Member State requests such a plan, because the institution there is of significant importance for the financial system.

Overall the RTS provides a useful framework to support the planning process and is consistent with approaches set out by global standard setters and national authorities. Introducing such an RTS will help achieve consistency in the authorities' analysis of RRP, although there is a risk that a detailed level of prescription may constrain a full and comprehensive consideration of the recovery measures and scenario planning. Supervisory dialogue should reduce this possibility.

Question 1:

The legislation in this field is differing according to Member States. Some Member States already have the required legislation in place to a large extent, while others are still in the process of adopting it. For example, in Spain the respective legislation (Law 9/2012) forecasts the obligation for Spanish institutions to develop and maintain a recovery plan. However, the concrete contents of such a plan are still depending on the provisions to be developed by the competent authorities.

Question 2:

As a basic principle, it is appropriate for the draft RTS on recovery plans to specify the basic contents of a recovery plan to enable a crisis to be overcome at an early stage. Nevertheless, in this regard it ought not to be overlooked that whilst the recovery planning assumes various scenarios (Article 5 (5)), the specific circumstances, which will make it necessary to take recovery measures, will hardly be possible to be predicted in detail. It would accordingly be detrimental to the objectives pursued with the recovery planning if an institution/a group of institutions could no longer react flexibly to a specific situation.

However, the requirements of the recovery planning appear in part to be too closely defined or too detailed. Here it would be desirable to have minimum standards which offer the institutions sufficient leeway to develop their own plans tailored to their respective situation. Nevertheless, on the basis of Art. 6 (3) (c) and (d) it is clear that the contents of the plans as provided for in the RTS rather contain maximum requirements and are primarily directed at institutions which are closely networked with other market participants or provide central services in the financial markets. Accordingly, the proposed principle of proportionality contained in the Recital 4 ought also to be clearly reflected in Art. 1 RTS.



Question 3:

Art. 2 (2) (a) (evidently Art. 2 (a) is meant here) defines indicators as a set of criteria which determine the point at which an institution should consider and determine which specific recovery options it may need to apply in reaction to the actual crisis situation that has materialised. According to the Recital 6, these should not be understood as thresholds which, when overstepped, virtually automatically activate counter-measures laid down in advance, but, rather, the point at which a detailed analysis of the situation of the institution should commence and possible recovery options be initiated. Under 5 (c) (2), the institution is to define the indicators in the plan.

This approach is welcomed. However, in this regard it needs to be taken into account that banks already possess a certain latitude to control regulatory equity quotas or liquidity ratios (e.g. LCR) within the scope of their regular business activities. Furthermore, it must be ensured that an institution is not deemed to be "in need of recovery" as long as the "overstepped" indicators are still at a stage before regulatory authorities need to take early intervention measures or lie below the insolvency threshold. In no event may an institution be deemed to be a "recovery case" solely by reason of the fact that the instruments provided within the scope of risk management are also provided for in the plan as possible counter-measures.

Furthermore, Recital 9 of the RTS requires banks to test recovery options against specific scenarios. Given that the relevant economic environment in a recovery situation is difficult or virtually impossible to predict, we would see more benefit if generic scenarios were analysed and tested instead of specific scenarios. Generic scenarios would also be more consistent with the definition of "indicators" (Article 2(a)), which requires banks to reassess and determine the reaction to the actual situation.

With respect to the definition of "material entities" contained in Article 2(c) of the draft RTS, it should be made clear that this definition is only meant to be relevant for the purposes of the RTS on the content of recovery plans as set out in Article 2 by "For the purposes of this Regulation, ...". However, the definitions provided in Article 2 of these draft RTS should clearly have no impact, reach and/or prejudice on similarly worded definitions used for other regulatory contexts such as ICAAP, for example.

Article 5(a)(1) and Article 5(c)(1)(a) stipulate that the "identification of natural persons" should be included. However, we have concerns about including the identification (i.e. name and other personal details) of natural persons who have been and/or are involved in recovery planning, and we do not see why this would be required in order to achieve proper governance. In fact, for recovery planning purposes, the role and function of natural persons who are to be involved is the only relevant information that needs to be provided. We therefore propose that the draft provisions be modified so that no personal details of natural persons, but only their role and function, are disclosed.



Question 4:

We are of the opinion that close correlations exist between the requirements specified in Article 5 and the risk management processes already practised today (ICAAP, ILAAP). This relates, for example, to the requirements of an emergency concept or to the management information system. Here, care should be taken in general that reference can, but need not necessarily, be made to existing processes in order, where appropriate, to avoid redundant arrangements for certain circumstances.

We strongly advocate that the governance arrangements provided for by Article 5 of the RTS should not prejudice any organisational structure of a credit institution beyond the scope of recovery planning. In particular, given that the tasks related and connected to recovery planning are not identical to risk management in a strict sense and concern also, *inter alia*, strategic issues in a broader sense, recovery planning should not be mandatorily and/or automatically classified as an extension of the risk management function in its set-up.

We reject the review of recovery plans within the scope of the audit of annual statements as provided for in the alternative in Article 5 (b) (1) RTS. Both under the FSB key attributes and also under the pending RRD, the proper preparation of the recovery plan lies within the responsibility of the management. Moreover, according to the RRD, it will be the task of the supervisory authority to examine and assess the recovery plan submitted by the institution. It should form its own opinion of any "shortcomings" of the plan. The creation of a further instance of control is accordingly not justified.

Question 5:

Article 6(1) requires institutions to, among other issues, identify their "critical functions". This is likely to be impossible for institutions in many cases; particularly in a cross-border context, it would have to be supported by analyses delivered by macroprudential supervisors. For example, the degree of substitutability of an institution's business lines reflects the institution's role in the market infrastructure, for an assessment of which supervisory support would appear appropriate. For comparability and resource efficiency purposes, "critical functions" should be made easier to define by providing sufficiently interpretable guidelines and/or examples in the explanatory notes.

The "mapping" of core and systemically important business lines called for under Article 6(3)(b) should be confined to legal persons and branches upwards from a certain size, so as to avoid unnecessarily overloading the recovery plan.

With regard to the "external connectedness" referred to in Article 3(b), it should be noted that what is needed is not a "description", but rather the identification of contagion risks. Determining how contagion risks can spread within the financial system is likely to go beyond the scope of a recovery plan, however. For instance, direct contagion effects resulting from interbank loans or credit default



insurance are difficult to assess. It should also be questioned whether a description of the main counterparties on the assets side and liabilities side of an institution/group would be helpful, given that these counterparties are constantly changing.

Question 6:

We understand Article 6(4) of the draft RTS to mean that recovery options to be named in the recovery plan should include measures of an extraordinary nature, as well as measures which may also serve or be used as normal or standard risk management measures. However, a clear distinction and allocation of recovery options to either category would not be possible and/or achievable, as the classification of a measure as normal/standard or extraordinary may change over time or in the light of the relative economic environment.

With regard to the “assessment of the effectiveness of recovery options” called for under Article 6(5)(d), it should be noted that credit institutions can provide an abstract description of identified recovery options with regard to particularly crisis-sensitive parameters, such as capital ratios, risk-bearing capacity, liquidity and earnings, both in the current scenario and in a stress scenario. However, because of uncertain market and competition conditions (e.g. when it comes to the planned sale of an investment), it is difficult to say anything definite in advance about the implementability of identified recovery options in the scenario then actually prevailing. The requirements in this respect should therefore be qualified accordingly. For example, the probability of recovery options being implemented could be indicated in a simplified form using a three-step scale (high, medium, low).

Question 7:

The stipulations laid down in Article 7 RTS on the elaboration of a "disclosure plan" for each option for action ought to be the subject of critical examination. It has always been acknowledged that the recovery of institutions is most likely to be successful when undertaken at the earliest possible stage behind "closed doors" and, where appropriate, with the involvement of a few of the major creditors. On this basis, the instrument of recovery planning sets in at an even earlier point in time, while the institution still has enough options open to it in order to manoeuvre itself out of the crisis by its own efforts. Such a recovery can nevertheless only succeed if it is carried out as "noiselessly" as possible. However, there is the risk in the case of credit institutions quoted on the stock exchange that the triggering of a (recovery) indicator and also the decision to implement a recovery option may also entail duties of disclosure under the pertinent provisions. Accordingly, in regulatory terms the duties of disclosure ought to be appropriately restricted.

It would furthermore need to be clarified that in the case of any external communication relating to a specific recovery measure taken, the recovery plan is not to be announced. This would thwart the proper obligation of the institutions laid down both in Art. 76 RRD and also at national level to



handle the recovery planning confidentially. Moreover, we would like to draw the EBA's attention to the fact that any unintended communication of parts of the recovery plan to the public could have a detrimental impact on the bank. Only a few people bound by professional confidentiality requirements should have access to the plan.

Question 8:

As a basic principle, it is right that an institution should gain an overview of the options available. However, since the specific circumstances which might make it necessary to take recovery measures can hardly be predicted in detail, an institution/financial group must still be in a position to react flexibly to a given situation, notwithstanding the recovery plan. It is doubtful whether it is actually necessary, as provided in Art. 8 a), to stipulate specific preparatory measures as recovery options. It is a question for the individual institution to decide which measures are expedient here.

Question 9:

We are unable to identify any synergy effects reflected as profit or loss between risk management and recovery planning. The two instruments cover different areas. Whilst it is true that, in the result, data can be generated from the risk management for the preparation of the recovery plans, the preparation of the recovery plan nevertheless entails additional expense. This means that it is all the more important for the processes laid down in the risk management to be made useable to the widest extent possible for the preparation of the plan, so as to avoid unnecessary (duplication of) expense. This relates, for instance, to the subject areas business and risk strategy, risk ratios, scenario observations and emergency plans. For example, the options under Article 8 need not be fundamentally re-drafted, but can be based on existing measures relating to equity capital or liquidity management (e.g. RWA reduction measures for the stabilisation of capital ratios in economic downturn, emergency plans related to the risk capacity or liquidity or the action plans deriving from stress tests). The complexity of the requirements in relation to the implementation and maintenance of recovery and winding-up plans would be significantly reduced by these means. Institutions could best profit from the new requirements if the instruments for the implementation of their requirements could be optimally networked with instruments already existing (e.g. in risk management).

Question 10:

This question cannot be definitively answered at the present time. A considerable cost factor lies in the fact that the institutions will need to provide staff capacities in quantities which cannot be currently quantified. As from a certain size of an institution it is, moreover, to be assumed that external support will be required, upon which it is also hardly possible to place a figure at the present time.



First findings from those institutions which, at national level, are obliged to prepare recovery plans show that the preparation of the plans entails extremely high costs.

Question 11:

Whether the RTS takes adequate account of the principle of proportionality is ultimately also a question in practice of which requirements the national supervisory authorities will stipulate in individual cases for the purpose of implementing the RTS.

The current proposal for the RTS contains a high degree of detail. Here – as already explained – the question of whether a plan is to be prepared at single entity level and if so in what scope, must be orientated on the threat which may emanate from an institution in a crisis situation. We consider that the nature, scale and complexity of the business of the credit institution should be taken into account, as well as their membership in an IPS. The RTS ought therefore to be formulated as minimum standards or basic principles which allow the institutions sufficient leeway to develop plans tailored to their own circumstances.

Question 12:

As soon as the EBA provides a reliable analysis of the possible effects of the RTS for the purpose of consultation, we shall be pleased to give our detailed response.



About WSBI-ESBG (European Savings Banks Group)

WSBI-ESBG – The European Voice of Savings and Retail Banking

WSBI-ESBG (European Savings Banks Group) is an international banking association that represents one of the largest European retail banking networks, comprising of approximately one-third of the retail banking market in Europe, with total assets of over €7,470 billion, non-bank deposits of €3,400 billion and non-bank loans of €4,000 billion (31 December 2010). It represents the interests of its members vis-à-vis the EU Institutions and generates, facilitates and manages high quality cross-border banking projects.

WSBI-ESBG members are typically savings and retail banks or associations thereof. They are often organised in decentralised networks and offer their services throughout their region. WSBI-ESBG member banks have reinvested responsibly in their region for many decades and are a distinct benchmark for corporate social responsibility activities throughout Europe and the world.



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