

British Bankers' Association response to EBA consultation on Recovery Planning Templates

Introduction

The British Bankers' Association ("BBA") is the leading association for UK banking and financial services, representing members on the full range of UK and international banking issues. It has 175 banking members that are active in the UK, which are headquartered in 50 countries and have operations in 180 countries worldwide. All the major banking groups in the UK are members of our association as are large international EU banks, US and Canadian banks operating in the UK and a range of other banks from the Middle East, Africa, South America and Asia, including China. The integrated nature of banking means that our members are engaged in activities ranging widely across the financial spectrum from deposit taking and other more conventional forms of retail and commercial banking activities to products and services as diverse as trade and project finance, primary and secondary securities trading, insurance, investment banking and wealth management.

All of our members recognise the importance of robust recovery planning and many of them have been working to prepare recovery plans which they are continuing to discuss and refine with the UK regulatory authorities. So this EBA consultation on a Regulatory Technical Standard (RTS) for recovery planning templates¹ is of relevance to all of the BBA members and so we have been able to draw on their experience in responding to it.

Key messages

The draft RTS stray too far into the realm of resolution planning

We see a clear distinction between recovery planning, which is the responsibility of the institution's Board and senior management team and resolution which is the responsibility of the resolution authority. In a number of places the draft RTS crosses this boundary and asks the institution to undertake analysis that should more properly be undertaken by the resolution authority - for instance the requirement for the institution to undertake a strategic analysis of critical economic functions.

For this reason, and because we believe EBA has over-interpreted the requirement to undertake a 'strategic analysis' we have suggested the deletion of the whole of Article 6 as our view is that the strategic analysis required solely relates to an assessment of the recovery strategies.

¹ http://www.eba.europa.eu/cebs/media/Publications/Recommendations/EBA_Recommendation-on-Recovery-Plans.pdf

Testing of recovery actions against regulator defined scenarios would not be helpful

Recovery planning should be a menu of possible actions designed to deal with a range of different possible stress scenarios - there should not be a deterministic selection of a recovery option based on a particular scenario. In part the draft RTS is helpful as it emphasises that testing against scenarios is a second step once the full list of recovery actions has been identified - we would not want there to be any stronger a link than that.

Confidentiality

We continue to be concerned about the increasing desire for disclosure by many operating in banking regulation combined with the extreme sensitivity of much of the information being collected by regulators. A very large part of our members' recovery plans will be hugely market sensitive, and disclosure seriously risks damage to financial stability. Confidentiality is vital and it maybe that the EBA should consider producing guidelines on this important aspect of regulators' guardianship of our members' recovery plans.

Questions related to the draft RTS

Question 1 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?

As a trade association, representing both large and small members in the UK the BBA has not been directly involved in the preparation of recovery plans. However as recovery planning has been a significant topic of regulatory interaction between members and the FSA the BBA has facilitated a number of roundtable discussions which have included banks of different sizes.

Many members have already prepared and submitted their recovery plans for review, with the rest, comprising the smaller less systemically important banks, finalising theirs in the coming months. A key learning from this has been that the process of preparing a recovery plan is time consuming for the bank – as it should be given the importance of effective recovery planning for promoting financial stability and ensuring that the banking system can continue to fulfil its proper role in society by providing finance to the wider economy. An equally important learning point is that the review of completed recovery plans by the regulator is just as resource intensive particularly if it is to be able to give timely and constructive feedback to the bank.

It will be particularly important in the early years whilst recovery planning is being developed as a crisis management avoidance and mitigation technique, for there to be a cooperative and iterative process between the bank and its supervisor, working together where appropriate in the Crisis Management Group. The full value of this process will not be captured unless supervisors are sufficiently resourced to be able to engage in constructive, informed and critical review of a bank's recovery plan in order that it can be further refined.

The EBA should ensure that as it reviews the national implementation of its recommendation that the competent authorities it assesses have sufficient resources devoted to the scrutiny of banks recovery plans.

Question 2 *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 sufficiently comprehensive in the majority of the areas it addresses. However the requirements in Article 6 – Strategic analysis - to provide a detailed description of a group’s business lines and critical functions and their mapping to legal entities and branches are too onerous and should be more properly situated in the Resolution assessment². We agree that as currently drafted Annex A point 1 of the draft Recovery and Resolution Directive does require a ‘strategic analysis’. But we take this to mean (for instance by considering point 18) that the strategic analysis required relates to an assessment of the recovery strategies to ensure that the arrangements or measures described in points 4 to 18 are suitable and appropriate to that institution. We do not think a complete review of the institution’s strategic plan is required and therefore strongly recommend the deletion of Article 6 as it appears to go well beyond the requirements of section A of the Annexe to the draft directive and stray into the territory of the resolution plan.

Question 3 *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*

We believe that the reference to Art.2 (2) a in the question in fact refers to Art. 2 (a), which relates to ‘indicators’.

We are pleased that the EBA has used ‘indicators’ rather than ‘triggers’ in this article. We view an indicator as a warning flag that that a bank has crossed a threshold to a different, potentially weaker position and that management should be on a heightened level of readiness to take appropriate action, rather than implementing an automatic ‘pre-programmed’ response.

We are supportive of the EBA’s proposed approach to the escalation process. The governance process should explain how an escalation plan would be invoked were an indicator (or more likely group of indicators) suggest that there was an emerging stress which was significant enough to be reviewed by an appropriate level of management , as article 5 (c) sensibly requires it to do.

However we are unclear what is meant in Article 5. (d) (1) which requires that the recovery plan documents “a description of how management information systems are managed”. This is rather too generic so that it is not clear which management information systems are covered and what specifically is required. However, we understand and support the statement in 5 (d) (1) which requires that it must be clear how information necessary for implementation of recovery options can be promptly made available.

We suggest a consolidation of Art. 5 (d) so that it reads:

² <http://www.eba.europa.eu/documents/10180/204980/EBA-CP-2013-08---CP-on-Draft-RTS-on-Assessment-of-Recovery-Plans.pdf>

(d) management information systems, including:

~~(1) a description of how management information systems are managed;~~

(1) ~~(2)~~ a description of how the institution, the parent undertaking or institution subject to consolidated supervision pursuant to Articles 125 and 126 of Directive 2008/48/EC, will ensure that the management information systems necessary for decision-making about the possible implementation of recovery options in stressed conditions can ~~be~~ reliably and timely be made available.

Question 4 *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 obvious overlaps between the ICAAAP, ILAAP and the Contingency Funding Plan (CFP) that many of our members are required to prepare, all of which address thematically similar regulatory requirements. We encourage the EBA to be ambitious and consider the advantages for regulators and banks alike of consolidating stress testing, capital and liquidity planning and buffers and CFPs into one all-encompassing regime, working where necessary with the industry and European Central Bank as it develops the Single Supervisory Mechanism.

This could be achieved by removing the requirement for CFPs, given that the requirements are now redundant as their purpose is now fully captured in the Recovery Plan. Work could also be undertaken to ensure that the ILAAP and ICAAP requirements are also aligned with the Recovery Plan.

Question 5 *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)*

As we note above we believe the whole of Article 6 reflects a different interpretation from ours of section A's requirement for a strategic analysis – the word 'strategic' occurring only once in this section.

Our interpretation is that this section encourages (as it should) management to consider radical options in a period of severe financial stress, such as disposal of business units, deep cost-cutting or the raising of new capital which have an impact that is able to 'move the dial'. We see these sorts of initiatives as being strategic, rather than tactical in nature and it is in this context that we have interpreted the draft directive's use of the word 'strategic'. So we suggest the deletion of this entire Article which should be re-introduced in the EBA's RTS on resolution assessment.

Question 6 *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 supportive of the requirement that the recovery options should be described in a way that allows the competent authority to make an assessment of their likely effectiveness.

However as we have noted above we do not think a significant part of Article 6 sits well in a RTS on recovery planning but should instead be moved to an RTS on resolution assessment.

But we would recommend moving sections 4 and 5(a) of Article 6 as currently drafted as well as the non-resolution aspects of 5 (b) to a new article titled *Recovery options*, or possibly adding it to Article 5, where the term 'recovery options' is first used.

Such a new article might look as follows:

Article [6] - Recovery options

- (1) ~~The section on recovery plan recovery options referred to in paragraph (2)~~ shall include a section setting out a range of possible recovery options designed to respond to financial stress scenarios and which are described in a way that enables the competent authority to assess the impact and feasibility of each recovery option. Recovery options shall include measures which are extraordinary in nature and which are not measures taken in the course of the institution's or group's normal business.
- (2) The section on recovery options referred to in paragraph (2) shall at least include the following information and analyses:
 - (a) a list and description of each recovery option. Institutions shall demonstrate they have considered, and shall include where appropriate:
 - (1) a range of capital and liquidity actions required to maintain operations of, and funding for, the institution's or the group's critical functions and core business lines ~~which have as their primary aim ensuring the viability of critical functions and core business lines~~;
 - (3) arrangements and measures the primary aim of which is to conserve or restore the institution's own funds or the group's consolidated own funds through external recapitalisations and internal measures to improve the capital position of the institution or group;
 - (3) arrangements and measures to ensure that the institution or group has adequate access to contingency funding sources, including potential liquidity sources, an assessment of available collateral and an assessment of the possibility to transfer liquidity across group entities and business lines, to ensure that it can carry on its operations and meet its obligations as they fall due; these measures shall include external measures and, where appropriate, measures that aim at reorganising the available liquidity within the group.
 - (4) arrangements and measures to reduce risk and leverage, or to restructure business lines including, where appropriate, an analysis of all possible material divestment of assets, legal entities, or business lines;
 - (5) arrangements and measures the primary aim of which is to achieve a voluntary restructuring of liabilities, without triggering an event of default, termination, downgrade or similar event;

- (6) where the institution or group considers it necessary, any other management actions or strategies the primary aim of which is to restore the financial soundness of the institution or the group;
- (3) each recovery option shall include an impact and feasibility assessment, which shall include:
- (1) a financial and operational impact assessment which sets out at least the expected impact on solvency, liquidity, funding positions, profitability and operations of the institution and/or group. Where relevant the assessment shall clearly identify the different entities of the group which may be affected by the option or involved in its implementation;
 - (2) ~~an assessment of external impact and systemic consequences assessment which sets out the expected impact on critical functions performed by the institution or group and the impact on shareholders, on customers, on counterparties and, for a group, on the rest of the group;~~
We have deleted this section as it refers to critical functions and is therefore relevant to resolution planning.
 - (3) ~~in relation to the impact assessments referred to in points (i) and (ii), the~~ valuation assumptions and all other assumptions made, concerning inter alia the marketability of assets or the behaviour of other financial institutions. In particular, the impact assessment shall include a detailed description of the processes for determining the value and marketability of the ~~core~~ business lines, operations and assets of the institution or the group that could be disposed of during a reasonable recovery timescale;
 - (4) a feasibility assessment including the risk associated with each option drawing on, existing experience of executing the option or an equivalent measure and detailed analysis and description of any material impediment to the effective and timely execution of the plan and a description of if and how such impediments could be overcome. Material impediments are any factors that could potentially negatively affect the timely execution of the recovery plan. These factors shall at least consider legal, operational, business, financial, and reputational risks including, where appropriate, any risk of rating downgrades;
 - (5) in a group recovery plan, an analysis of potential obstacles to the effective implementation of each recovery option which result from the structure of the group or intra-group arrangements, including, where appropriate, whether there are substantial practical or legal impediments to the prompt transfer of own funds or repayment of liabilities or assets within the group;
 - (6) solutions to the potential obstacles identified under point (5)
 - (c) delete
 - (d) delete

We have proposed the deletion of section c as we do not agree that an operational contingency plan is required for each recovery option and for every institution that is part of a group explaining how continuity of operations can be maintained. We believe that any effective recovery plan must inherently be designed to ensure the continuing operation of the group or institution where that institution is not part of a group. Therefore, any recovery option cannot put this at risk if it is to be viable.

Similarly we have proposed the deletion of section (d) as recovery planning should be flexible with the key focus being on viable options that are well articulated rather than on pre-planning for particular supervisor-defined scenarios that are unlikely to be the real scenarios our members actually face.

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

We fully support the requirements for the institution to have a well thought through communication plan which should be complemented by an equally well thought through communication plan for the competent authority.

However it is not the intention of our members to disclose the range of their recovery options nor that, if they have been activated, that they have been invoked. Similarly we believe that it would not be in the authority's interest for it or others to disclose this.

Question 8 *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.*

We support the suggested requirements in Article 8.

Question 9 *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?*

Yes they are. However our members can incur significant costs in reformatting data that is used for one purpose, for instance the preparation of an ICAAP or an ILAA/CFP for another regulatory purpose. Our strong view is that the recovery plan remains the responsibility of the company and its board so that information contained therein should be based on the bank's own internal business information augmented where necessary by existing regulatory reporting. The EBA's broadly drawn templates recognise this, which we welcome, and we would encourage it to resist any calls that might emerge for more granularity within the templates which could result in an unhelpful deviation from the bank's own management processes or the requirement for specific recovery related regulatory reporting.

Whilst we agree that some of the costs are already incurred, the requirement that recovery plans be prepared at the level of an institution that is part of a group as well as at group level, which we acknowledge stems from the draft directive, will introduce significant extra costs and does not pass the 'use test' as banking groups do not manage themselves in this way. The costs of meeting this additional tier of recovery planning will be substantial and will introduce the risks that extra complexity and repetition will bring.

Questions related to the impact assessment

Question 10 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?

We believe the main drivers and benefits of costs and benefits have been identified.

Question 11 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?

We agree that the costs of producing a recovery plan are likely to be proportionate to the size and complexity of a bank's operations although our largest banks will likely retain standing recovery planning teams, which make the costs arising from people governance and monitoring more fixed in nature. Larger BBA members tell us that they have established significant project teams to meet the FSA's recovery planning requirements although it is to be expected that as recovery planning is further embedded as a business-as-usual business process these costs will decrease somewhat.

We support a proportionate approach which recognises that for smaller banks, without any systemic impact, the most likely approach in the event of failure will be a bank insolvency process. We hope that resolution authorities will recognise this as the most appropriate route particularly when the bank can provide a robust single customer view, as we believe all should be able to do.

Question 12 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.

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