

# POSITION PAPER



## **ESBG Position Paper on the EBA Discussion Paper on a template for recovery plans (EBA/DP/2012/2)**

ESBG (European Savings Banks Group)

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## **ESBG's responses to the consultation questions**

### **General remarks**

ESBG believes that the template is well-balanced. However, as a general remark, ESBG would like to stress the difficulty to assess a possible “template for recovery plans” at this stage. Most of the questions presented in the discussion paper are premature, since national deadlines for drawing up recovery and resolution plans are only in the end of 2012 in some Member States. Only then a thorough assessment will be feasible. Hence, our comments will not be exhaustive.

Moreover, the issue of consistency between the European regulation and the US Dodd Frank Act has to be addressed in order to be sure that rules are globally harmonised.

In general it might make sense to consider an obligation for drawing up a resolution and recovery plan (RRP). However, differentiation between different types of credit institutions is necessary. Such an obligation should focus on large international banking groups, i.e. Global Systemic Important Financial Institutions (G-SIFIs). In these cases a template for a recovery plan can be helpful to enable an institution/group to react immediately to upcoming distress situations.

Smaller institutions with a regional focus should generally be exempted from the RRP requirement. This would not exempt them from having adequate measures in place. Notably, there are supervisory rules in place already requiring financial institutions to regularly identify their core businesses as well as the associated strategic risks and to prepare action plans for stress situations. These requirements are mainly set out under pillar II and apply to smaller institutions all the same.

Such an exemption would be in line with the Commission's Communication from October 2010 which required an RRP in accordance with an institution's size, its refinancing possibilities and its access to sector specific support. Moreover, an exemption regarding the obligation for drawing up RRP is justified, if the credit institution is a member of an institution protection scheme. Institutional protection schemes ensure that savings banks will continue to operate and that their obligations will be fully fulfilled. In contrast to deposit guarantee schemes, such schemes go far beyond what is required by law, because under these schemes customer deposits are fully protected. The institutional protection is achieved by funds provided by the group itself.

Furthermore, our experience shows that institutional protection is by far less costly than resolution of a bank in order to satisfy creditors. This leads to the conclusion that the institutional protection scheme is a proven and successful form of an early intervention mechanism and works like an institutionalised RRP.

The institutional protection scheme includes main aspects of the proposed templates for RRP. These schemes have mechanisms for early intervention at its disposal such as on-going risk monitoring which allows member institutions to be classified into different risk categories. The monitoring is implemented and controlled by a dedicated risk monitoring board. This allows the assessment of an impending aggravation of risks at an early stage, so that the necessary steps to cope with the individ-



ual crisis situation can be taken. Should the distress situation nevertheless exacerbate, restructuring measures can be combined with recapitalisation measures.

**1. Have you already drafted/approved a recovery plan or are you in the process of doing so? If so, please reply to the following questions referring to your experience**

Some of ESBG's members are currently in the process of preparing a recovery and resolution plan.

**2. Is your recovery plan or would your future recovery plan be in line with the contents of the template and its underlying approach? Please mention the relevant differences, if there are any**

No major differences have been identified. However some parts included in the EBA recovery plan template are located in separate parts of national guidelines on resolution and recovery plans (RRP), as e.g. in Austria, and are therefore not included in the respective recovery plans.

**3. Are there legal provisions and/or guidelines in place in your jurisdiction with regard to recovery plans and resolution plans? If so, are there any elements of this template which conflict with those provisions?**

Concerning certain Member States, ESBG cannot identify legal provisions concerning recovery plans which are in conflict with national jurisdictions, e.g. in France.

In certain Member States the guidelines on RRP are only addressed at the biggest banks, e.g. in Austria.

Under German jurisdiction, the competent authority (BAFIN) can demand strategic papers from institutions in financial distress which fulfil the task of recovery planning especially under two different circumstances. If an institution is likely to fail to meet the capital requirements, the competent authority has the power to require a concept which exposes how an institution is planning to avoid possible endangerments of not being able to fulfil its obligations towards. If an institution fails to meet the capital requirements the competent authority can require a so called restructuring plan which shall demonstrate how and in which timeframe the institution or group is able to sustainably restore its capital resources and liquidity. The institution or group has to report to the competent authority regularly as well as to the German Central Bank about the successful implementation of the proposed measures.

Other Member States currently have no provisions in place regarding recovery plans and there are no guidelines on this matter, either.

Nevertheless, credit institutions that are also active in the USA have to establish resolution plans for the entire group according to the Dodd Frank Act. The purpose of these plans is similar to the purpose of the European recovery plans.



On the other hand, ESBG does not understand why resolution is not treated within this first consultation. Regarding resolution plans, it is very likely that there will be inconsistencies between the European and certain national frameworks, e.g. in France.

**4. What kind of legal implications and/or binding effects does the plan have in your jurisdictions, if any, and what should they be, in your opinion?**

Currently in some Member States only regulatory guidelines are in place, i.e. there is no direct legal implications and/or binding effects. In other Member States the plans mentioned under Question 3 are for the institution or group if required by the competent authority.

The plan is primarily a concern for the bank. Although an internal review of the organisation and its business will increase the awareness and transparency within the organisation, it is unlikely that the plan will exactly fit a forthcoming crisis. The plan is, however, likely to constitute good preparation for a crisis situation. Nevertheless, it should not be binding, since significant adjustments may be needed due to the specific nature of a forthcoming crisis.

**5. Do you believe the draft recovery template to be sufficiently comprehensive and cover all the aspects relevant for the purpose of the recovery plan? If not, please specify what is missing.**

It is sufficiently comprehensive.

**6. Should the recovery plan include scenarios and assumptions as possible points of reference for testing the various recovery options? What role should they play within the recovery plan and with respect to the possibility to consider *per se* the various triggers and negative impacts?**

When it comes to scenarios, banks are already conducting scenarios tests within the Internal Capital Adequacy Assessment Process (ICAAP). It is reasonable to base the recovery plan on these scenarios, which impact on activities and entities covered by the recovery plan.

It is however not constructive to go too deep into the details of a particular scenario, since it is very likely that a real crisis will be different. The function of different scenarios is more illustrative than predictive. Flexible thinking and a well analysed organisation and activities should be the main goal.

Ranking the various recovery measures is therefore not appropriate (see answer to Question 12).

**7. How would/do you identify quantitative and qualitative recovery early warnings and triggers? What are the key metrics you would use to develop early warnings and triggers?**

When it comes to triggers/early warnings there are several starting points: capital, liquidity, funding costs, the market capitalisation. In our mind, triggers should indicate that action and analysis is needed but not linked to narrowly specified actions, since that may hamper flexible thinking in an upcoming crisis situation.



The recovery plans of certain Members do not contain percentages or figures, since warnings and alerts depend on the cause of the crisis. The alert will be different if a crisis stems from liquidity or if it comes from losses in credits. Therefore, it seems to be doubtful to solely rely on a trigger which is composed of a certain figure.

Some of our Members have foreseen to expose the different stages of entry into the phase of recovery which are based on multiple alerts constituting together the elements which enable the Board to take the necessary measures. At this stage these are preventative measures.

**8. What kind of corporate governance arrangements have you adopted or would you adopt for recovery planning? Please comment on differences to the template.**

Concerning the corporate governance arrangement, some of our Members express that their projects are entirely in line with the template.

**9. How do/would you ensure the consistency between your group recovery plan and recovery plans drafted by your main entities? For this purpose, are you aware of any obstacles in the current legal framework?**

Currently in some Member States there is no real guidance regarding the treatment of recovery plans at group versus at local level. The issues of parent undertakings and its subsidiaries are not covered. Furthermore, the special topic of cross border banking is not included in any guidance so far. Questions like: “Shall we have an RRP for each single regulator or shall we be able to define core activities at group level (irrespective of national implantation) and disclose this only to core regulators?” are arising.

ESBG believes that a well defined cooperation between authorities is the basis to handle cross-border banks. It is important that the authorities are coordinated and take similar measures within a group. Preferably the lead supervisory should coordinate demands and measures. To be able to coordinate the supervision ESBG believes that the group recovery plan should constitute the foundation on which the individual plans for subsidiaries or branches are based.

One of our Members is developing one single plan for the group. It is not planned to break this plan down into sub-plans per entity, since the different components of the group are linked through an internal solidarity mechanism regarding the liquidity and solvency of each of the components as well as of the entire network. On the basis of this mechanism, the default of one enterprise would be covered by the group. Therefore, it is appropriate to have one single plan at group level. Of course, an evident condition has to be that the group plan covers the entirety of the significant entities of the group.

**10. What range of recovery measures do you think should be envisaged in the template?**

The tools mentioned in the consultation address the essential measures contained in the resolution plans of some of our Members.



**11. Have you got any remarks or concerns related to the confidential nature of the information provided in the recovery plan? If so, please elaborate.**

Information included in recovery and resolution plans is highly sensitive data therefore confidentiality agreements of all parties/authorities involved are absolutely necessary, especially if the resolution authority established in a Member State is not the supervisory authority. It will also be difficult to obtain a confidentiality commitment of the collaborators of the supervisor. Article 76 of the proposed directive on EU-Crisis Management already contains confidentiality obligations, which in principle, should be sufficient. In addition, special agreements could be helpful when an institution in distress is negotiating with certain creditors on the basis of the recovery plan.

Nevertheless, the number of recipients must be kept to an absolute minimum. It will be difficult to conciliate the confidentiality of the plan with the number of persons who are supposed to participate in it and to have access to it. But to maintain the effectiveness of the plan it is indispensable that it stays secret. If institutions have the slightest doubt about the confidentiality of their plan, they should better abandon its establishment - bearing in mind the fragility its divulgence could cause for the institution.

If an institution is maintained as a going concern the question of the confidentiality of the plan has to be treated with great caution, just as the question of the number of persons who are involved in it.

Furthermore, it has to be kept in mind that the different Member States have different secrecy regulations. It must be absolutely clear that the information in a recovery plan is secret, whether the information is held by an authority or not.

**12. Should the plan include a ranking among the various recovery measures, differentiating between them with regard to possible scenarios and assumptions and taking into account the expected impact of each measure?**

ESBG believes that ranking is not appropriate (see answer to Question 6).

A ranking among the various recovery measures is not possible, as this would mean making assumptions about the next crisis. A set of various recovery measures should be prepared and in case of a crisis the management could implement one or more recovery measures as it deems best under these special circumstances.

Some already existing recovery plans are based on the principles mentioned in the question.

**13. How would you assess the credibility of a recovery plan? Please comment on your experience.**

The credibility of a recovery plan depends on the qualitative and quantitative appropriateness and proportionality of the measures taken to face the problems treated in different crisis scenarios. Among others, it contains the fields which are usually used for the stress tests: liquidity, risk, business continuity plan.



In order to assess the adequacy of a recovery plan, the plan's triggers and assigned measures could be subjected to a general scenario analysis. A frequent application of crisis scenarios could help to identify aspects of the plan that need adjustment. However, the restrictions mentioned above (see answer to Question 12) are to be considered.

**14. What kind of information arrangements have you put in place to ensure that the right information is available within a short time frame for decision-making in a stress situation?**

The information necessary for the plan is the same that is used in going concern situations, yet according to schemes adapted to the specific governance of the plan.

**15. How frequent should interactions/iterations between the supervisor and the financial institution be? What role should the supervisor play?**

Based on the fact that the plan primarily is a concern of the bank, an update appears to be reasonable if there are significant changes to business structure. The authority should be a sounding board for the bank in preparation of the plan.

The frequency of interactions with the supervisor should not necessarily be predefined. The recovery plan is part of a period of going concern. When the institution is still managing perfectly its governance, its relations with the supervisor should not be disturbed and should only be intervened if it is necessary. Therefore the resolution plans of some of our Members foresee specific information for the supervisor according to the different levels of the recovery plan.

**16. The implementation of a recovery plan is likely to structurally modify the financial institution and its sources of revenues. Should a forward looking business plan, assuming the implementation of the recovery options, also be part of the recovery plan?**

ESBG believes that clarity between the recovery plan and a strategic plan or a strategic business model is crucial. These two elements do not pursue the same objectives: recovery for one and expansion and development for the other. The objectives of establishing a plan are to increase the awareness and transparency in a bank and to be able to take action if it is needed. The circumstances when the plan is established are likely to differ from the situation when it becomes necessary to apply the plan.

**17. Please provide views on the impact, including your costs and benefits analysis, of the issues involved in the preparation of a recovery plan?**

At this stage, this analysis has not been conducted. It is nevertheless clear that significant resources are necessary - including the associated costs.

**18. Have you made, or do you plan, changes in the organisation to facilitate successful implementation of the recovery plan in the future?**

Some ESBG members have put in place an organisation which enables the implementation and the follow-up to the recovery plan, in accordance with what is usually done when a new activity is de-



veloped (*i.e.* without restructuration, maintaining 'business as usual' during the going concern period).



## About ESBG (European Savings Banks Group)

### ESBG – The European Voice of Savings and Retail Banking

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.

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. 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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