



BANKING STAKEHOLDER GROUP

RESPONSE TO THE EBA CONSULTATION PAPER ON: I) DRAFT GUIDELINES ON THE DETERMINATION OF WHEN THE LIQUIDATION OF ASSETS OR LIABILITIES UNDER NORMAL INSOLVENCY PROCEEDINGS COULD HAVE AN ADVERSE EFFECT ON ONE OR MORE FINANCIAL MARKETS UNDER ARTICLE 42(14) OF DIRECTIVE 2014/59/EU, AND II) FACTUAL CIRCUMSTANCES AMOUNTING TO A MATERIAL THREAT TO FINANCIAL STABILITY AND OF THE ELEMENTS RELATED TO THE EFFECTIVENESS OF THE SALE OF BUSINESS TOOL UNDER ARTICLE 39(4) OF DIRECTIVE 2014/59/EU (EBA/CP/2014/24)

General Comments and Replies to Questions

BY THE EBA BANKING STAKEHOLDER GROUP

London, December 18, 2014

Foreword

The BSG welcomes the opportunity to contribute to the development of the guidelines for: i) the specification of the circumstances amounting to a material threat to financial stability and of elements related to the application of the sale of business tool, and ii) the assessment of when the liquidation of assets or liabilities under normal insolvency proceedings could have an adverse effect on the financial market under the Bank Recovery and Resolution Directive (BRRD).

General comments

BSG supports the overarching objective of these guidelines, which is to establish a framework on the use and application of these two resolution tools when an institution is failing or likely to fail. It is fundamental to consider their impact on other institutions and financial markets, including infrastructure providers and non-financial institution customers, and also the circumstances which are relevant for the risk that marketing the institution under resolution presents, in aggravating uncertainty and a loss of market confidence that could disturb financial stability.

It is expected that these guidelines will provide the convergence of supervisory and resolution practice in the implementation of these tools, by ensuring consistent and high regulatory standards in this area and a level playing field across the EU.

Regarding the sale of business tool, we agree with the guidelines that it is necessary to look for an optimal balance between competitive, transparent and "fair" market conditions and the increased efficiency (lower value and terms) of the sale.

With regard to the liquidation of assets or liabilities tool, we are convinced that it is one of the most useful tools in the event of a crisis whose consequence would be the loss of value and liquidity of certain assets. Although we consider that the criteria that must be assessed - before deciding whether the separation of assets is the optimal strategy decision - are quite subjective, we appreciate the effort of the EBA in establishing common criteria at the EU level, and that it is making progress.

In the following section, the BSG submits detailed responses to the EBA's questions.

Replies to Questions

1. Should the elements listed above be further specified by any qualitative or quantitative indicators, in particular with respect to the development of prices or market conditions as factors evidencing a material threat to financial

stability, to ensure convergent practices? Are there further relevant elements which should be included?

Yes, if indicators are established they must be common and harmonised among the different Member States, so as to guarantee a level playing field in the application of the sale of business tool. Nevertheless, it must be kept in mind that each sale of business tool is different and should be allowed some leeway, in particular with respect to the circumstances that determine prices and market conditions.

2. Are there further potential conflicts between the marketing requirement and the effectiveness of the sale of business tool?

We consider that the guidelines are sufficiently comprehensive and detailed, and we do not have particular concerns about the conflicts that could arise from marketing requirements.

Regarding the elements related to the effectiveness of the sale of business tool and to financial stability, we would like to record our support for the limitation of the potential purchasers. In our opinion, to define the limits and criteria in a sale of business tool it is useful to discriminate and choose the best buyer, ensuring a quicker and more efficient sale. Additionally, we consider that allowing the use of the resolution fund to facilitate the sale of a business could limit the tail risk and generate value for the tax-payers. The use of the resolution fund should be seen as a guarantee, and the tool should be assessed both with and without guarantee to decide the best option for creating more value.

3. How could the exercise of judgment by resolution authorities be constrained to ensure convergence in practices in assessing these conflicts?

First, it would be necessary to evaluate the perimeter of the sale, and second to set clear elements and criteria to be used in the business sales tool, because each one is different and there may be differences in implementation among different jurisdictions. Nevertheless, the exercise could be constrained if previous agreements are defined, but in any case it is necessary to guarantee the minimum list of services or facilities that are necessary to enable a purchaser to operate a business which is offered for sale.

4. Should the elements listed above further be specified by any qualitative or quantitative factors to ensure convergent practices? Are there further relevant elements which should be included?

In general, the guidelines are sufficiently comprehensive and detailed. Nevertheless, the EBA should consider that there are “non-core” assets that must be included in a “bad bank” when this tool is applied. These non-core assets could be by business or geographic units.

Additionally, EBA should clarify that when a bridging bank is created, the minimum number of services or facilities required to enable a recipient to operate the tool must be operative from the outset. It would not be necessary to limit the legal service agreement and its deadlines as each operation is different, but compensation at market prices can be regulated and demanded as "fees at market" that can regulate future investments.

5. Which specific considerations should apply regarding the liquidation of derivative portfolios? Is the assessment of the impact of the unwinding of derivative portfolios practicable? How could it be made more practicable?

6. Are there further relevant examples of assets and liabilities linked to each other?

See answer to question 4.

7. How could the exercise of judgment by resolution authorities be constrained to ensure convergence in practices in assessing the situation of the financial markets and the impact of the disposal of assets?

See answer to question 4.

Submitted on behalf of the EBA Banking Stakeholder Group

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