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Feedback from the European Federation of Building Societies on the EBA consultation on draft Guidelines on the overall recovery capacity in recovery planning form

QUESTION 1: DO YOU HAVE ANY COMMENTS ON THE GENERAL FACTORS TO BE CONSIDERED WHEN ASSESSING CREDIBILITY AND FEASIBILITY OF THE RECOVERY OPTIONS?

P. 24 f., para 19: Assessment of credibility and feasibility of recovery options

“The general factors for the credibility and feasibility assessment of the recovery options to be considered by the institutions [...] should include in particular the following elements: [...]

- b. Past experience from the implementation of the recovery option by the institution or its peers provided there is available information;
- c. Level of preparedness for implementing the recovery option; [...]
- f. The anticipated timeline for the implementation of the recovery option;”

We reject the requirement under letter b that past experience of other institutions in implementing these options for action should also be taken into account when assessing the credibility and feasibility of options for action, due to the lack of prospects of success. If it becomes publicly known that an institution is in financial difficulties, the associated damage to its reputation can intensify the crisis of the institution. To avoid such a self-fulfilling prophecy, institutions communicate individual crises only to the supervisory authorities, but typically not to the public. Consequently, the search for information on possible courses of action taken by other institutions is very time-consuming, but not very promising and thus inefficient.

We reject the requirement under letter c that the degree of preparation for implementing the option for action should be taken into account when assessing the credibility and feasibility of options for action, as it is already implicitly taken into account in the implementation period mentioned under letter f. The worse an institution is prepared for implementing an option for action, the less effective it is. The worse an institution is prepared for the implementation of an option for action, the longer its implementation period. The better an institution is prepared for the implementation of an option for action, the shorter its implementation period. Consequently, the degree of preparation for the implementation of the option for action and its implementation period are redundant criteria for assessing the credibility and feasibility of options for action. Since the degree of preparation for the implementation of a policy option can - if at all - only be indicated

qualitatively, whereas the implementation period can be precisely forecast in days, we recommend deleting letter c in favour of letter f.

Due to the efficiency problem we have explained under letter b and the redundancy problem we have identified under letter c, we recommend the following wording for paragraph 19:

"The general factors for the credibility and feasibility assessment of the recovery options to be considered by the institutions [...] should include in particular the following elements: [...]

b. Past experience from the implementation of the recovery option by the institution ~~or its peers~~ provided there is available information;

~~c. Level of preparedness for implementing the recovery option; [...]~~

f. The anticipated timeline for the implementation of the recovery option;"

QUESTION 2: DO YOU HAVE ANY COMMENTS ON THE SPECIFICATION OF THE SCENARIO SEVERITY FOR THE PURPOSE OF CALCULATING THE 'SCENARIO-SPECIFIC RECOVERY CAPACITY'?

P. 25, para. 21: Severity of the stress scenarios

The intended requirement under paragraph 21 that stress scenarios are only suitable for calculating a scenario-specific recovery capacity if the institutions violate their regulatory minimum requirements with regard to capital or liquidity indicators is in the wrong guideline. Directive (EU) 2014/59 (BRRD) requires in Art. 5, para. 6, second sentence, that " recovery plans contemplate a range of scenarios of severe macroeconomic and financial stress relevant to the institution's specific conditions including system-wide events and stress specific to individual legal persons and to groups." Art. 5, para. 7 BRRD adds that the EBA shall issue appropriate guidelines " to specify further the range of scenarios to be used for the purposes of paragraph 6 of this Article." The severity of stress scenarios should therefore not be set out in the EBA guidelines on recovery capacity but in the EBA guidelines on the range of scenarios to be used in recovery plans [EBA/GL/2014/06]. In order to avoid a violation of paragraph 21 against the BRRD, we therefore recommend the following wording of paragraph 21:

"To calculate the 'scenario-specific recovery capacity', institutions should assume scenario severity consistent to the EBA Guidelines on the range of scenarios to be used in recovery plans [EBA/GL/2014/06]."

QUESTION 4: DO YOU HAVE ANY COMMENTS ON THE GENERAL STEPS TO BE FOLLOWED FOR THE DETERMINATION OF THE ORC?

P. 27, para. 29: Recovery options with low probability of successful implementation

"[...] Recovery options with low/limited probability of successful implementation should not be included by institutions when calculating their 'scenario-specific recovery capacities'."

The intended specification in point 29 that recovery options with a low/limited probability of successful implementation should not be taken into account in the calculation of scenario-specific remediation capacities is terminologically imprecise. Since every probability is limited to the range of values between 0 and 1, the reference to a limited

probability is of no use from a mathematical point of view. In order to avoid any misunderstandings, we therefore recommend the following wording of paragraph 29:

"[...] Recovery options with low/~~limited~~ probability of successful implementation should not be included by institutions when calculating their 'scenario-specific recovery capacities'."

P. 27 f., para. 30: Constraining factors in the implementation of recovery options

"When selecting recovery options appropriate to a specific scenario, institutions should take into account in particular the following additional constraining factors related to the simultaneous or sequential implementation of recovery options:

- a. Mutual exclusivity – whether some recovery options are mutually exclusive;
 - b. Interdependencies – whether activating one recovery option could affect the subsequent or simultaneous implementation of another option;
 - c. Operational capability to implement a multitude of recovery options simultaneously;
- [...]"

The constraining factors in the simultaneous or sequential implementation of recovery options mentioned in points (a) to (c) are not distinct. The mutual exclusivity mentioned under letter a and the operational capability to implement a multitude of recovery options at the same time mentioned under letter c are subcategories of the interactions mentioned under letter b. For the purpose of a stringent definition, we therefore recommend the following wording of paragraph 30:

"When selecting recovery options appropriate to a specific scenario, institutions should take into account in particular the following additional constraining factors related to the simultaneous or sequential implementation of recovery options:

- ~~a. Mutual exclusivity – whether some recovery options are mutually exclusive;~~
 - b. Interdependencies – whether activating one recovery option could affect the subsequent or simultaneous implementation of another option;
 - ~~c. Operational capability to implement a multitude of recovery options simultaneously;~~
- [...]"

P. 29 f., para. 37: Assessment of recovery options with interconnections

"Competent authorities should review, where appropriate and feasible, the assessment and calculation performed by the institutions covering in particular the following areas:
[...]"

- d. Additional constraining factors related to the simultaneous or sequential implementation of recovery options, as specified in paragraph 30, including by removing or adjusting downward the impact of specific options where interconnection between some of them is detected, giving priority, inter alia, to options with the highest feasibility level and/or with the most material impact in the given implementation period."

We welcome the clarification that in the case of recovery options with interconnections, the supervisory authorities should give preference to those options for action with a higher feasibility and/or the strongest effect in the implementation period. However, we recommend that these selection criteria be set not only for supervisors but also for institutions for consistency. For example, after the current p. 27 f., para. 30, which is under the subheading "Step 2 - Adjustment of recovery options: additional constraining factors", the following text could be newly inserted:

"As selection criteria for interdependent recovery options, institutions should give priority to options with the highest feasibility level and/or with the most material impact in the given implementation period."

P. 34 f.: No solution to individual enforcement problems through new standards and no need to redefine overall recovery capacity

- P. 34: "The lack of more practical guidelines has led to several different practices across institutions, arriving in some cases to the non-representation of this measure [ORC] despite the afore mentioned regulatory requirements. [...] [T]he ORC assessment by competent authorities is carried out in a not fully consistent manner both in terms of nature of the review (e.g. whether the assessment is coupled with a proper challenge of the institutions' ORC) and scope (e.g. including the selection criteria for the recovery options by the institutions or the relevant time horizon for the ORC determination)."

The EBA justifies the draft guidelines with the fact that individual institutions do not report their overall recovery capacity and that some (national) supervisory authorities do not sufficiently check the content of the overall recovery capacity. However, a new standardisation of the disclosure of the total recovery capacities and their supervisory reviews are not necessary, as the BRRD already stipulates in the Annex, Section A, No. 1 that recovery plans must contain "a summary presentation [...] of the recovery capacity" and requires in Art. 6, Para. 5 that the supervisory authority must assess whether "the recovery plan contains material inadequacies". In addition, unlike the Guidelines on the range of scenarios to be used in recovery plans [BRRD, Art. 5, para. 7] and the Guidelines on recovery plan indicators [BRRD, Art. 9, para. 2], the EBA does not have an explicit mandate from the European Parliament and Council to develop guidelines on overall recovery capacity. Finally, the problems that, contrary to the BRRD, individual institutions do not report their overall recovery capacities and that some (national) supervisory authorities do not sufficiently check the content of the overall recovery capacities cannot be solved by further standards. These enforcement problems can only be solved by enforcing applicable law and disciplining the national supervisory authorities - however, the EBA is not responsible for both tasks.

Due to the above-mentioned existing requirements on the identification and supervisory review of the overall recovery capacity, the lack of a mandate for the EBA and the impossibility to solve enforcement problems with existing standards through new standards, we do not see the need for these "own-initiative guidelines [EBA/CP/2022/15, p. 5]". We recommend to individually discipline those institutions and supervisors that violate existing law instead of creating bureaucracy for all institutions and supervisors through new standards.

- P. 34f: "The concept of the ORC is described in high-level terms in Article 12 of the Commission Delegated Regulation (EU) 2016/1075 as 'the extent to which the recovery options allow that entity or those entities to recover in a range of scenarios of severe macroeconomic and financial stress' and with no detailed guidance on the relevant steps underlying its determination. [...] The draft Guidelines' aim is to enhance the quality and the harmonisation of the ORC for being a meaningful summary indicator of 'recoverability'. For this, as said above, it needs to be determined and consistently summarised by institutions, as well as soundly assessed by competent authorities."

The EBA's assumed need to renew the definition of the overall recovery capacity in CDR 2016/1075 contradicts the EBA's 2021 statement. In the guidelines on recovery plan indicators [EBA/GL/2021/11, p. 33], the EBA noted that some consultees asked

for a definition of the overall recovery capacity. However, the EBA refrained from redefining the overall recovery capacity, noting as justification: "The concept of overall recovery capacity is explicitly defined in Article 12(3) of the Commission Delegated Regulation (EU) 2016/1075 which describes 'the overall recovery capacity of the entity or entities covered by the recovery plan, being the extent to which the recovery options allow that entity or those entities to recover in a range of scenarios of severe macroeconomic and financial stress'. The concept of ORC is also referred to in point (1) of section A in the annex to the BRRD and its definition is included in these guidelines in paragraph 13 [EBA/GL/2021/11, S. 33 f.]." As we share EBA's view from 2021 that the overall recovery capacity is already sufficiently defined in CDR 2016/1075, we recommend to refrain from redefining the overall recovery capacity in EBA/CP/2022/15, p. 28, para 31 f.

QUESTION 7: DO YOU HAVE ANY COMMENTS ON THE PROPOSED ORC SCORE?

P. 31, para. 42: ORC score and level of the recovery indicators at the end of recovery scenarios

"Competent authorities should assess the 'adjusted ORC' specified in accordance with the paragraphs 40 and 41 assigning the following levels considering the 'relevant RP indicators' thresholds and the related regulatory requirements:

- a. 'Satisfactory' – in cases where the 'relevant RP indicators' of the institutions after the inclusion of the 'adjusted ORC' are above their thresholds defined in line with the "Guidelines on Recovery Indicators";
- b. 'Adequate with potential room for improvement' – in cases where the 'relevant RP indicators' of the institutions after the inclusion of the 'adjusted ORC' would fail to be above the thresholds defined in line with the "Guidelines on Recovery Indicators", but they would still be equal to or higher than institutions' capital including leverage and liquidity regulatory requirements referred to in paragraph 21 adding all applicable regulatory buffers;
- c. 'Weak' – in cases where the 'relevant RP indicators' of the institutions after the inclusion of the 'adjusted ORC' would fail to meet the institutions' capital (including leverage) and liquidity regulatory requirements referred to in paragraph 21 adding all applicable regulatory buffers."

Letter b suggests that institutions must move their recovery indicators above the minimum regulatory requirements, the SREP add-on and all regulatory buffers at the end of recovery scenarios in order to obtain even the middle ORC score and thus be considered eligible for recovery. The expectation that institutions in recovery scenarios must first fall below their SREP add-on in accordance with p. 25, para. 21 and later move their recovery indicators above the minimum regulatory requirements, the SREP add-on and all regulatory buffers is contrary to Directive (EU) 2014/59 (BRRD) and CDR 2016/1075 for recovery planning:

- BRRD, recital (21): "Institutions should be required to submit their plans to competent authorities for a complete assessment, including whether the plans are comprehensive and could feasibly restore an institution's viability, in a timely manner, even in periods of severe financial stress."
- CDR 2016/1075
 - Recital (15), first sentence: "The objective of recovery planning, as set out in Directive 2014/59/EU, is to identify options to maintain or restore the viability

and financial position of an institution or group when it is subject to severe stress.”

- Art. 17, No. (2): “[T]he relevance of information contained in the plan is considered to be established if such information focuses on identifying options to maintain or restore the financial strength and viability of the institution or group;”

The above standards require that recovery plans restore the functionality, viability, financial soundness and viability of institutions. This requirement is already met if institutions comply with the minimum regulatory requirements and the SREP add-on, as institutions are allowed to fall below the additional regulatory buffers without losing their licence to operate. The EBA's expectation that institutions must move their recovery indicators above the minimum regulatory requirements, the SREP add-on and all regulatory buffers at the end of recovery scenarios thus goes far beyond the expectation of the BRRD and CDR 2016/1075. As the BRRD and CDR 2016/1075 are to be applied with priority over EBA guidelines, we recommend the following wording of point 42:

“Competent authorities should assess the ‘adjusted ORC’ specified in accordance with the paragraphs 40 and 41 assigning the following levels considering the ‘relevant RP indicators’ thresholds and the related regulatory requirements:

- a. ‘Satisfactory’ – in cases where the ‘relevant RP indicators’ of the institutions after the inclusion of the ‘adjusted ORC’ are above their thresholds defined in line with the “Guidelines on Recovery Indicators”;
- b. ‘Adequate with potential room for improvement’ – in cases where the ‘relevant RP indicators’ of the institutions after the inclusion of the ‘adjusted ORC’ would fail to be above the thresholds defined in line with the “Guidelines on Recovery Indicators”, but they would still be equal to or higher than institutions’ capital including leverage and liquidity regulatory requirements referred to in paragraph 21 ~~adding all applicable regulatory buffers~~;
- c. ‘Weak’ – in cases where the ‘relevant RP indicators’ of the institutions after the inclusion of the ‘adjusted ORC’ would fail to meet the institutions’ capital (including leverage) and liquidity regulatory requirements referred to in paragraph 21 ~~adding all applicable regulatory buffers~~.”

GENERAL REMARKS

P. 12-18: Number of graphical illustrations

If the gross and net scenarios as well as the scenario-specific recovery capacity are presented in three scenarios for each of the five recovery indicators mentioned on p. 26, para. 27, $3 * 5 * 3 = 45$ illustrations are already required. If institutions - as is common in practice - do not only consider five recovery indicators, numerous additional illustrations are required. Since too many illustrations make recovery plans confusing and the information on scenario-specific recovery capacities is already contained in the illustrations of the net scenarios, we recommend sticking only to the illustrations of the gross and net scenarios.

P. 23, para. 12: General definition of terms

"Unless otherwise specified, terms used and defined in Directive 2014/59/EU, Directive 2013/36/EU and Directive (EU) 2019/2034 have the same meaning in the guidelines."

In line with other EBA guidelines, we recommend that the numerous terms in the draft guidelines, such as scenario-independent recovery capacity, scenario-specific recovery capacity, ‘adjusted overall recovery capacity’ and ORC score, are defined centrally, clearly and