

GENERAL COMMENTS

Santander welcomes the opportunity to respond to the EBA's Consultation Paper on Draft Regulatory Technical Standards *on the content of recovery plans under the draft directive establishing a framework for the recovery and resolution of credit institutions and investment firms* (RRD), published on March 11, 2013.

Santander strongly supports the EBA's efforts in the establishment of a harmonized framework of standards regulating the content of recovery plans to ensure the proper functioning of the single market. A minimum set of common information standards is key to avoid non-level playing field implications across jurisdictions and to safeguard financial stability. To this end, **Santander** endorses that RTS be adopted by means of a regulation so that they are binding in their entirety and directly applicable in all Member States.

Santander broadly agrees with the content of the EBA Consultation which is adequately comprehensive and sufficiently relevant to enable entities to draw robust and credible recovery plans.

In particular, we would like to highlight the following EBA draft RTS as **significant upgrades in recovery plan content**:

- Indicators should not be interpreted as thresholds which activate any particular recovery measure. Moreover, indicators should not necessarily lead to the activation of the recovery plan itself. Rather, they should suggest that an escalation process of decision-making should be initiated.
- The approval of individual recovery plans for entities pertaining to a group requires not only the approval of the entity's management but also the final approval of the management of the parent undertaking.
- If they exist, intra-group financial support agreements should be described as part of the strategic analysis comprising recovery plan content.

- The need for a set of varied scenarios following the premise that these should not address each and every possible source of distress.

Nonetheless we would like to also underscore **the following elements which merit further consideration and redrafting:**

- Some of the information requested is more reasonable for resolution purposes than for recovery (i.e. identification of critical functions, external interconnectedness). As requested by the FSB in its Key Attributes' appendixes, sensitive and detailed information should therefore be provided in the framework of resolution planning, not recovery.
- Recovery measures, included as part of a recovery plan, may be used in previous situations as in the course of the institution's or group's normal business. Therefore, recovery measures do not have to be in all cases extraordinary in nature as the EBA states in its Consultation.
- It must be absolutely clear that information in a recovery plan is confidential and only strictly accessible to the firm and authorities pertaining to core colleges of supervisors. **Santander** would welcome guidelines on confidentiality standards.

Finally, **Santander** is pleased to view that the EBA Consultation has been launched well ahead of the final Directive approval to provide for sufficient anticipation to address key elements of recovery planning content.

SANTANDER RESPONSE TO CONSULTATION QUESTIONS

Q.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?

Santander has developed recovery planning since 2009, making it one of the industry's pioneers in this practice.

As of today, **Santander's** Recovery Plan includes both the Corporate Recovery Plan and an annex to this Plan comprising individual recovery plans for 7 of the 10 key markets in which **Santander** is present. Our objective for 2014 is to cover the full spectrum of 10 key markets with our 4.0 version of Recovery Plans. The governance of these plans provides for coordinated processes as regards to their preparation, approval, and if needed, for their activation.

In general, our recovery plan content is aligned with the EBA draft RTS.

Q.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 EBA draft RTS are adequately comprehensive and contain sufficient and relevant requirements to enable a timely and effective restoration of the viability of an institution in case of financial deterioration.

In particular, we endorse that the EBA outlines the general content of recovery plans while leaving as well the necessary flexibility for entities to develop the structure and order of that content as long as it complies with the RTS.

Nonetheless, **we would like to highlight the following comments relative to those cases in which the degree of comprehensiveness may be excessive:**

In our view, requesting a summary of the key elements of each section of the recovery plan will lead to considerable overlapping given that some sections of the recovery plan already follow a summarized approach (i.e. mapping of core business lines and critical functions to legal entities; communication plan., etc).

We doubt whether a summary requirement for each of the sections of the recovery plan will provide additional value for either management or competent authorities.

On the other hand, **there are certain elements which merit further clarification due to insufficient comprehensiveness:**

In particular, **Santander** advocates that it is necessary for the EBA, in consultation with the European Systemic Risk Board (ESRB), to develop general guidelines specifying the range of scenarios of financial distress that entities can use to test their recovery options (akin to the requirement established under Art.5.6 of the Commission draft proposal establishing a RRD). This approach would safeguard a minimum degree of consistency and harmonization across national jurisdictions on the parameters that determine the likelihood of occurrence of scenarios and on the definition of severe stress.

Paragraph 1, pg.12 of the EBA Consultation states: “*The objective of this section is **for the institution or the parent undertaking of the group to define several stress scenarios...***” which could misleadingly convey that the EBA would play no role in this process and that it would be entirely up to institutions to define their own scenarios.

From a perspective of feasibility, recovery planning should be aimed at drawing credible recovery measures and arrangements to a number of relevant stress scenarios. Requiring an institution to carve recovery options to a myriad of improbable scenarios would defeat the very purpose of recovery planning. Therefore, a compromise must be struck between severity and plausibility.

Going forward, **Santander** acknowledges that it is key to eliminate any impediments which may obstruct the timely and effective implementation of recovery options (paragraph 11, pg.12). Nevertheless, we would like to stress that it should initially be up to the entity’s management to act accordingly to the identified impediments and proceed to their removal. Were this removal insufficient or unsatisfactory to attain recovery objectives (once assessed by competent authorities), the entity’s management shall draw in consultation with

the competent authorities a mutually agreed framework of measures to ensure that deficiencies or impediments are removed.

Q.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.

Santander endorses the EBA's definitions on Article 2, as well as the general approach to recovery consisting of a continuum of escalation and decision-making by management.

As a very positive feature, **we welcome that the EBA asserts that indicators should not be interpreted as thresholds which activate a particular recovery measure. To our understanding, indicators should not as well necessarily lead to the activation of the recovery plan itself.** Rather, indicators should suggest that an escalation process of decision-making should be initiated.

Also, we endorse that an individual recovery plan of an institution pertaining to a group should be approved not just by the local management of the entity, but also, and as a final step that ensures coordination among the individual plans for the different entities within a group, by the management body of the parent undertaking or of the institution subject to consolidated supervision. To ensure consistency, Art 7.6 of the Commission draft proposal establishing a RRD should be accordingly amended to reflect this important EBA draft RTS.

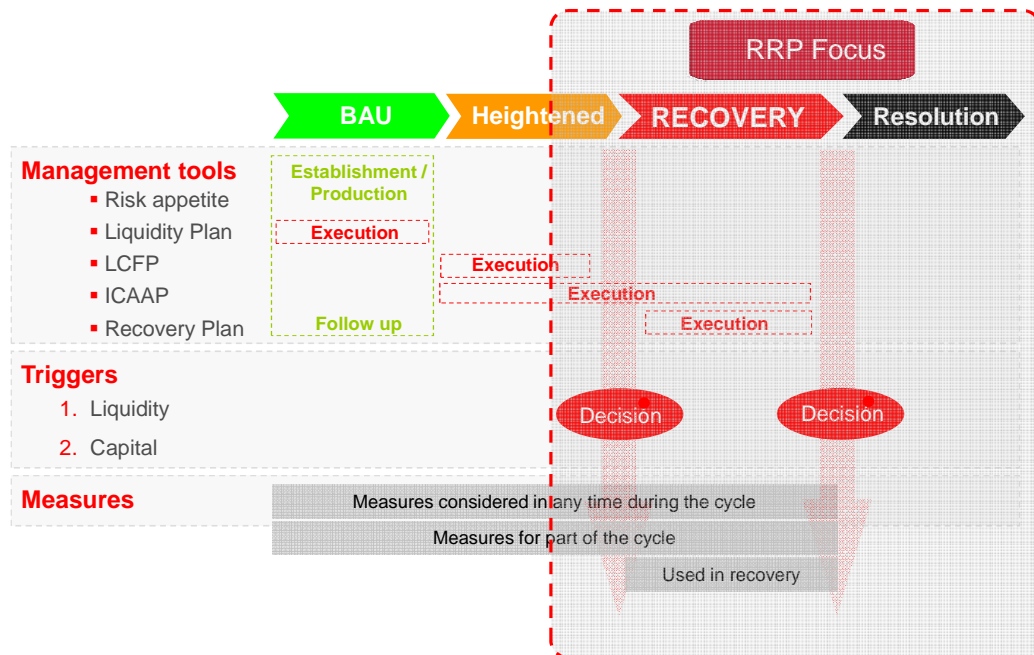
As a final comment to this question, we would like to point out that **Santander's** key decision-making on recovery is undertaken in Committees. Given this format (and possible change of member composition over time), we find excessively prescriptive the identification of natural persons involved in the escalation and decision-making process (as well as the identification of their roles and responsibilities) as required by Art.5.1(a) of the RTS.

Q.4. Please provide your views on the relationship between 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).

Our view is that there is a strong relationship between these three exercises which require similar starting points in terms of scenarios, measures and monitoring of risk levels. Hence, there should be proper coordination between the three and a clear, though flexible, demarcation on the scope of each one.

As a matter of fact, some jurisdictions are questioning whether it is reasonable to account for three different contingency plans. Their view is that these plans should be consolidated into a single comprehensive document which would clearly identify each of the phases of capital and liquidity deterioration and the specific governance that an entity needs in place. A relevant part of the measures available are, or could be, included as part of the three plans, so there should be significant efficiency gains to reap in terms of simplicity and scale economies.

We provide a comprehensive overview of the interrelation between the three in the diagram below:



As can be viewed in the diagram, the ICAAP and ILAAP share common features with the Recovery process in terms of triggers and measures.

Q.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)

Santander supports the requirements for the description of the institution or group, as stipulated by the strategic analysis in the draft RTS. We particularly welcome the introduction of the requirement describing any existing intra-group financial support agreements concluded in accordance with Article 16 of the RRD as part of the recovery plan content.

However, **we would like to make the following precisions:**

Though operational interconnectedness within a group is a significant feature to assess when laying out recovery options, it should be viewed within the prism of the considerable impact that the sale of certain units such as hubs (i.e. centralized groups) would entail in recovery. Therefore, this requirement would exclusively affect those groups which integrate within their banking structure hubs.

Santander would like to highlight that though its model of shared services centers (“factories”), consisting of autonomous, separate legal entities within the Group which provide operational and technological services, entails operational interconnectedness between the factories and each bank, this model also exhibits a clear, well-documented, arms-length and easy to “unplug” (or to maintain) relationship, which adequately meets the goals of both recovery and resolution exercises.

Therefore, this particular model allows the Group to function without exhibiting operational interconnectedness between entities of the Group.

An additional benefit is that this structure provides the necessary flexibility in recovery (and even in resolution) to proceed with the sale of any subsidiary (if envisaged as a recovery option) without triggering a major disruption in the provision of critical services in the event of severe stress given that the “factories” would continue functioning on an independent basis.

Similarly, **Santander** considers unnecessary the requirement to provide “**a description of the external interconnectedness**” (d; pg.16) on a general basis. This requirement would only be justified in those specific cases in which a recovery measure implies the interruption of the provision of a critical service. In this respect, this requirement should take due account of the nature of the recovery measure and the bank’s business structure.

In our view, this particular requirement is closely linked to resolution information (and is in fact addressed, to some extent, in points 8 and 21 of Section B of the Annex of the Commission Proposal for a RRD) rather than recovery.

As a final observation, **it is important to underline that though the description of critical functions is key in recovery (RTS N.3 (3)), their identification is at present determined by competent authorities when drawing the resolution plan.** Thus, seamless communication between the authorities and the entity on this point is crucial to provide a complete recovery “self-portrait.”

Q.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 concur that the draft RTS under Article 6 (4) comprehensively and adequately captures the different categories of recovery options that could be considered.

Nonetheless, **we would like underscore the following refinements:**

We do not agree that “*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 normal business*” (pg.16). **Recovery options do not have to always be extraordinary in nature and may well include measures which could be taken in a Business As Usual (BAU) scenario** (i.e. sale of assets, business lines, divestitures,.). Conversely, measures deemed as “extraordinary” (i.e. divestiture of a large unit as part of the group’s business portfolio management) could also be appropriate in a BAU scenario.

We would like to emphasize that the nature of the measures adopted should not prescribe, nor define, whether an entity is in BAU or recovery.

Therefore we would strongly encourage amending the EBA Consultation in this particular point to reflect this.

In relation to the impact assessment (b3; pg.17), we support that it should 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 **but only if these core business lines, operations and assets are included within or as part of a recovery measure.**

Finally, we would suggest amending the need to provide an operational contingency plan (c; pg. 18) for all recovery measures to only those specific options which entail an interruption in the provision of a critical service. In all other cases, it is excessively prescriptive and ultimately unnecessary for recovery purposes.

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

No comment.

Q.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 of what types of preparatory arrangements or measures could or should be taken into account in the analysis of the recovery plan.

Preparatory measures should be interpreted as specific measures that in a pre-recovery phase could potentially increase the effectiveness of the recovery options identified.

We would suggest in order to enhance the consistency of Art. 8b, to explicitly add that preparatory measures “*are specific measures used in a pre-recovery phase...*” (as it is in fact it is stated on page 8 of the Consultation).

Q.9. Do you agree that some costs of preparing recovery plans are already incurred by the requirements of having a proper risk management framework?

Yes, there are scale economies between the two to the extent that scenarios and measure envisaged are largely shared in common (please refer to the diagram provided in our response to Q.4). The only significant difference between each one would refer to their governance.

Q.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?

Santander would like to reiterate the important benefits linked to the establishment of a minimum set of common information standards adopted by means of a regulation to avoid non-level playing field implications across jurisdictions. In this respect, **this regulation shall be key in overcoming differences in requirements stemming from current local initiatives in some EU Member States which could lead to significant costs for internationally diversified banking models** (i.e. in terms of compliance).

From a broader perspective, we would encourage a similar approach to produce an international standard that would even out any discrepancies issuing from differing local requirements in non-EU countries.

Moreover, this would be of particular importance to ensure a minimum degree of consistency and baseline continuity in the transition from recovery to resolution in the context of cross-border strategies and the need for cooperation between home and host authorities.

Q.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 if so of the costs its failure may create?

Santander asserts that the costs of producing recovery plans are likely to be proportional to the complexity of the firm but not to its size.

The size of an entity/group does not *per se* entail greater costs to produce recovery plans if its banking model is operationally simple and the degree of interconnectedness is clear and well-known. In this respect, size is not a substitute nor a synonym for complexity or interconnectedness. Rather, size can provide significant scale and scope economies which simplify business and operational processes to achieve greater efficiency.

Santander's model consisting of self-contained subsidiaries, autonomous in capital and liquidity levels, though subject to common corporate policies and shared services centers ("factories") exhibits the aforementioned advantages, enabling each bank to be treated as local in each market. Each individual recovery plan for each local bank is truly independent, though subject to strict coordination requirements with the parent undertaking (i.e. voting not just by local management but also by corporate management).

Q.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?

No comments.