BANKING STAKEHOLDER GROUP

CONSULTATION ON EBA/CP/2014/18 ON
DRAFT REGULATORY TECHNICAL STANDARDS
ON INDEPENDENT VALUERS
(For the purposes of Articles 36.14 and 74 of BRR Directive 2014/59/EU)

General Comments and Replies to Questions

BY THE EBA BANKING STAKEHOLDER GROUP

London, 9th October, 2014

Foreword

The EBA Banking Stakeholder Group (BSG) welcomes the opportunity to comment on the Consultation Paper EBA/CP/2014/18 *Draft regulatory technical standards on independent valuers*, developing the requirements to the appointments envisaged by the articles 36 and 74 of Directive 2014/54/EU.

This response has been prepared on the basis of comments circulated and shared among the BSG members and the BSG's Technical Working Group on Recovery and Resolution.

The BSG welcomes the initiative of setting the conditions for appointing independent valuers using a principles-based approach instead of establishing a comprehensive prescriptive list of particular rules to be followed by the competent authorities, so helping them to make appropriate decisions in the appointment of independent valuers. It is therefore welcomed that only two situations *per se* are identified as precluding the independence of the valuer.

General comments

The Banking Stakeholder Group welcomes this opportunity to comment on EBA's draft Regulatory Technical Standards and would like to draw attention to some general comments, before addressing the specific questions included in the Consultative Paper. Whilst welcoming the document, the BSG has some reservations with respect to parts of the draft RTS and these are outlined in the next section.

In particular, the BSG appreciates the general conditions established in Article 1, that require that the appointed valuer must have sufficient and adequate expertise and resources, legal and structural separation, and the absence of any material conflicting or common interest with the entity being valued.

Replies to Questions

Q1. Do you agree that the approach followed in the draft RST to determine and identify conflicts of interest is the appropriate one?

The BSG concurs with the position that the assessment of the independence of the valuer require to be carried out not only with respect to the resolution authority and the distressed institution/entity

but also to the shareholders and the creditors of the institution. However, we suggest that the test of independence with respect to the institution needs to be carried out also with respect to the group and other related parties of the institution (for instance, senior management or directors).

In particular, we agree with the proposal that the independent valuer shall not be an affiliated undertaking and shall not belong to the same group of companies with the institution/entity, as it is said in Article 3.2.

On the other hand, the BSG also believes that the independent expert may not be an associate or joint venture of any of the entities within the group in which the institution / entity is included. In this respect, the scope of the entities in Article 3.2 needs to be enlarged ("associated undertaking" and "joint ventures" have the same meaning as that in the Accounting Directive 2013/34/EU or the equivalent for the bank industry).

Valuation firms in some European countries are linked with banks by closed relationships different from the affiliation (control). The banks have over those firms either significant influence if they are associates (i.e. more than 20 per cent of the voting power or the possibility to appoint a director) or joint control exercised with other financial or non-financial firm if they are joint ventures. In both cases the ability to develop an independent valuation could be impaired because of the previous links maintained with the institution/entity in resolution.

Q2. Do you agree that three years is the appropriate period of time for the purposes of Article 4(5)?

Yes, the BSG agrees with that cooling off period, but believes that the same period must be applicable for the auditor of the entity in Article 4.7.

Contrary to the rest of experts that could be appointed as valuers, the case of the auditor needs to be reconsidered because the roles of auditor and valuer could be incompatible, in such a way that:

- The prohibition should be extended to the auditors of the group. The auditor of the institution/entity, their affiliates or other entities in common control with this institution/entity shall not be appointed as independent valuer for the purposes of the Directive 2014/59/EU, and

- The cooling off period should also be applicable to auditors. This means that there is a total prohibition for auditors to be valuers if they have audited the institution/entity in the year preceding its assessment and that the cooling off period of three years in 4.5 is, per se, applicable to these auditors in the same conditions as the rest of professionals (so, this implies an enlargement of two years).

The reason for this position is that the auditor verifies accounting valuations and disclosures, with the objective of informing if the financial statements give a true and fair value of the financial position and the activity of the institution/entity. In most cases, the common understanding is that this role is in conflict with the role of valuer for other purposes (i.e., for resolution decisions). Note that the financial statements show comparative figures for the current and the preceding year.

Q3. Do you agree with the possibility to task the temporary administrator as an independent valuer, subject to the conditions set for in the above provision?

The role of administrator, either temporary or permanent, is by nature different from the role of valuer. Therefore, the point of view of the administrator and the valuer could easily enter into conflict.

The opinion of the BSG is that the appointment of a (temporary) administrator as independent valuer must be avoided, in order to avoid also that the views and expectations generated in the mind of the expert in his/her period as manager can taint his/her objectivity as valuer.

As a matter of fact, the possibility to appoint an administrator as a valuer can enter into conflict with the provision of Article 4.3, which establishes the principle that a valuer shall not have any material interest in common or in conflict with the management, senior management or the rest of the management body. It is often the case that the administrator develops common interests or conflicts with the other groups involved in the institution/entity, and therefore he/she could impair his/her ability to develop objective valuations.

The fact that the temporary administrator is appointed for a period of less than one year is not an argument to exclude the existence of common interests or conflicts with the rest of

the stakeholders of the organisation in the institution/entity, as long as those interest or conflicts are developed irrespective of the length of time of the administration.

Nevertheless, the BSG can support another solution consisting of giving to the competent authority the possibility to do the appointment if, considered case by case, there is no doubt that the nominee has no material interest in the institution/entity to be valued.

Q4. Do you reckon there are other cases of where independence should be ruled out in any case?

The BSG has not identified any other cases.

Q5. Do you agree with the approach outlined in the impact assessment and more specifically, with the elements included in the assessment of costs and benefits?

The BSG believes that the elements included in the cost-benefit assessment are appropriate.

Other relevant points

a) Major point. Appointment of two or more valuers for the institution/ entity. In Article 2.2 it is stated that the independent valuer shall hold sufficient human and technical resources to carry out the valuation. In the case of big banks in resolution, some Member countries would have problems to appoint a valuer able to do the job, due to the size of the institution/entity. In such cases the Article should permit the appointment of two or more valuers (or valuation firms) by the competent authority, with the condition of sharing the responsibility of the valuation report.

b) Minor point: to be consistent with the scope of the RTS, in the first paragraph of the text it should be cited not only the Article 36(14) of the BRR Directive but also the Article 74, which is developed by the RTS.

Submitted on behalf of the EBA Banking Stakeholder Group

David T Llewellyn

Chairperson, EBA Banking Stakeholder Group