BANKING STAKEHOLDER GROUP

CONSULTATION ON EBA/CP/2014/21 ON
"DRAFT GUIDELINES ON TRIGGERS FOR EARLY INTERVENTION MEASURES PURSUANT TO ARTICLE 27(4) OF DIRECTIVE 2014/59/EU"

General Comments and Replies to Questions

BY THE EBA BANKING STAKEHOLDER GROUP

London, December 20th, 2014

Foreword

The EBA Banking Stakeholder Group ("BSG") welcomes the opportunity to comment on the Consultation Paper 2014/21 "Draft Guidelines on triggers for use of early intervention measures pursuant to Article 27(4) of Directive 2014/59/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 Planning.

As in the past, the BSG supports an initiative that aims at harmonizing supervisory rules and practices across Europe, in order to ensure fair conditions of competition between institutions and more efficiency for cross-border groups. The BSG also expects these initiatives to facilitate data sharing between European supervisors and avoid reporting duplications for banks. However, the BSG identifies a number of issues which, unless properly addressed, could lead to unintended results.

This response outlines some general comments by the BSG, as well as our detailed answers to some questions indicated in the CP.

General comments

We fully endorse the spirit of the guidelines which are addressed to competent authorities with the express aim of promoting a consistent application of a range of triggers for decisions regarding early intervention within the Recovery and Resolution regime. The Consultation Paper produces useful guidelines for competent authorities with respect to the circumstances under which consideration should be given to early intervention. The BSG supports the intention of promoting convergence of supervisory practices in the application of early intervention measures.

The BSG sees the proposed guidelines on triggers for early intervention measures as an important element of the framework for recovery and resolution. The indicators defined intend to signal the transition from business as usual driven by the management of an institution to a situation where the institution is potentially subject to early intervention measures from the competent authorities.

We generally appreciate that the Consultation Paper explicitly states that the triggers for early intervention should not create any automatic application of intervention measures but should support the competent authorities in their decision process. In this context we would like to stress that we regard the ongoing dialogue between the competent authorities and the institutions as fundamental. This is not clear from the Consultation Paper but of extreme importance both for the supervisors and the institutions during critical phases of the Recovery and Resolution process.

We also support the emphasis in paragraph 9 that when taking any early intervention measures, competent authorities should choose the most appropriate measure and act proportionately.

The Consultation Paper does not establish any link between the recovery plan of an institution, the recovery indicators and indicator monitoring, the information flow defined towards supervisors in a recovery phase or the activation of recovery measures embedded in the recovery plan of an institution and the triggers for early intervention measures. The relationship between the recovery phase according to the respective regulation and the early intervention phase should be clarified.

Finally, the BSG supports the clarification in the Consultation Paper that early intervention triggers are explicitly not intended to indirectly establish higher quantitative standards for capital or liquidity.

Replies to Questions

1. Do you have any general comments on the draft Guidelines on triggers for the use of early intervention measures?

Please see introductory section for general comments on the draft Guidelines.

2. Do you consider the level of detail used in the draft Guidelines to be appropriate?

We consider the level of detail as generally appropriate.

3. Do you have any comments on the proposed specification of early intervention triggers based on the outcomes of SREP?

We generally appreciate the approach to leverage on the SREP also for purposes of recovery and resolution as a potential trigger for early intervention. Nevertheless it should be noted that the SREP process is primarily a going concern approach, so results coming from it should be carefully applied to the activation of early intervention measures. Results or scores from the SREP should in any case not lead to automatic application of applying early intervention measures.

We would like to highlight that some factors considered in SREP, such as strategy or deviation from budget, should not be relevant to determining whether early intervention is appropriate. In this regard, the interaction between the SREP outcome and the early intervention trigger should carefully be analysed on a case-by-case basis.

4. Do you have any comments on the proposed approach to use material deterioration or anomalies in key indicators in deciding whether there is a need to apply early intervention measures?

We would stress that even a material deterioration or anomaly in any key indicator should not automatically trigger early intervention measures. In such a critical phase the intense contact and dialogue between supervisor and institution is of utmost importance.

Again, it is unclear how the monitoring of key indicators and activation of early intervention measures is linked to the recovery plan of the institution with its early warning and recovery indicators and the potential activation of recovery measures by the institution itself. Close interaction between the supervisor and the institution is essential.

As already stated, the BSG welcomes the intention (as stated in the Consultation Paper) of not establishing any quantitative thresholds for indicators that could be perceived as establishing new levels for regulatory capital and/or liquidity requirements. However, we see the 1.5% threshold above an institution's own funds requirement as stated in §26 of the draft Guidelines as becoming an unintended additional capital requirement. We believe that this would be inappropriate and we would welcome clarification that this is not the case.

5. Do you have any comments on the proposed description of significant events that should be considered as possible triggers for the decision whether to apply early intervention measures?

We would again like to highlight that in the draft Guidelines no reference is made to the recovery plan of an institution and its execution in a crisis situation.The examples listed in the draft Guidelines would clearly be events that potentially trigger the recovery plan and lead to an assessment of the situation by the institution that if necessary would activate appropriate recovery actions.

The draft Guidelines do not specify the need of interacting with the institution before triggering early intervention measures by the competent authorities. Although it is difficult to imagine that no adequate dialogue takes place in such a critical phase, we deem it necessary to make this absolutely clear in the final Guidelines. The need for close coordination between possible recovery actions and early intervention measures is obvious and should be addressed and made explicit in the Guidelines.

Isolated "significant events" should be carefully analysed on a case-by-case basis. They should only be considered an early intervention trigger when it leads to the institution infringing or being likely to infringe the requirements set out in Article 27(1) of the BRRD. For example, a credit rating downgrade should not in itself automatically trigger a decision on whether to apply early intervention measures, but the focus should be of the impact of the relevant significant event on the institution.

6. Do you agree with our analysis of the impact of the proposals in this Consultation Paper? I 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?

We have no specific comment on this question.

Submitted on behalf of the EBA Banking Stakeholder Group

David T. Llewellyn
Chairperson