



BBVA

Madrid, 17 March 2015

BBVA response to EBA draft Regulatory Technical Standards Resolution Colleges under Article 88(7) of Directive 2014/58/EU

BBVA welcomes the opportunity to comment on the EBA's draft regulatory technical standards (RTS). We particularly appreciate the EBA's intention to seek views from industry and others on requirements under the Recovery and Resolution Directive (RRD) ahead of the legislation being formally adopted.

This draft RTS on resolution colleges is particularly welcome, as it helps to clarify the different decisions made by the resolution colleges both at the resolution planning phase and the effective resolution.

After having read attentively and thoroughly the draft document and taking into account our experience with supervisory colleges and within a Crisis Management Group we would like to make the following comments:

- I. **The role of third-country resolution authorities need to be clarified, as decisions made in the resolution colleges could have effects on those third countries. This is particularly important for those banking groups following a multiple point of entry resolution strategy.**

Some cross-border groups have geographical presence in Europe and out of Europe both in emerging and developing jurisdictions. In some cases they have followed a decentralized subsidiary model through subsidiaries, which are independent in terms of funding, operations and business management while in others they have decided a branch model approach. This decision will be crucial when deciding to follow a multiple point of entry or a single point of entry resolution strategy and this should be borne in mind when it comes to the functioning of the resolution colleges...

The legal scope of the Consultative Paper is reduced to Europe, so only authorities based in Europe are eligible as members. The role of third country resolution authorities is limited to participate as observers in the resolution colleges as long as they are subject to confidentiality provisions equivalent with the ones established in the Union law.

In this vein, the Consultative document distinguishes between regular joint decisions adopted during the resolution planning and those other decisions made in the effective resolution stage. Regarding the resolution planning phase:

- *Joint decision of the group resolution plan:* third-country resolution authorities do not participate in this joint decision and may only be involved in the drawing up or in the consultation of the Group resolution plan.



- *Joint decision on measures to address substantive impediments to resolvability:* third-country resolution authorities do not participate in this joint decision and are only consulted on the report prepared by the group level resolution authority to which they may submit comments on it.
- *Joint decision process on setting the minimum requirements for own funds and eligible liabilities (MREL):* According to the recital 80 of the BRRD, it should be clarified in this RTS that the joint decision on MREL at consolidated level does not apply in the case of a MPE group

Regarding the decisions of the effective resolution phase, such as the need for a group resolution scheme and the decision on the scheme, the third-country resolution authorities do not participate in it and are only consulted.

Because of the above mentioned reasons, in our opinion, the scheme proposed in this RTS could only be perfectly applicable to:

- Those banks with only presence in Europe
- Those banks with presence in Europe and in third countries, which have chosen the single point of entry as resolution strategy and all the problems (both in and out of Europe) are addressed always at European level.

For this reason, this RTS should be specific on the fact that for those banks with a presence in Europe and in third countries, which have chosen **the multiple point of entry resolution strategy, the joint decisions taken under this resolution college are only applicable at European level**. Hence, the resolution plan, the impediments and the MREL should be understood to refer only to the European part of the group.

In addition, in order to achieve joint decisions applicable at a group level (eg. high level resolution strategy), it would be necessary to establish a resolution college where third country resolution authorities are allowed to participate as full members as in the Crisis Management Groups (CMGs). However, we understand that this approach is not feasible under the EBA's mandate because it would be against the level 1 text (BRRD). Therefore, and in line with the FSB paper "Key Attributes of Effective Resolution Regimes for Financial Institutions", we propose for these cross border groups to maintain the CMGs where home or host resolution authorities both participate in the decisions. The CMGs should be able to adopt all the decisions included in the RTS.

II. Conflict between supervisory and resolution decisions.

It is possible that decisions made by the resolution colleges may be in conflict with those decisions adopted by the supervisory colleges because both their objectives



are different and they are independent of each other despite sharing their information.

In addition there is an issue in relation to the timing of their respective decisions, because they are not synchronized.

For these reasons it should be clearly stated in the paper what is the procedure to be followed in case of conflicting decisions.

III. **Disagreements between resolution authorities in the college.**

Last but not least, the RTS contemplates the possibility of disagreements among the members of the resolution colleges and the existence of joint decisions adopted by some, but not all the members of the college. The RTS should clarify how this type of decisions should be implemented, and what happen if they are not applied in all the different countries within the college or even if the decisions are different for different countries...

Q1: Do you have any suggestions regarding the process to be followed by the members of the resolution college for communicating with the Union parent undertaking and with its entities? Comments/suggestions are invited both with regards to the general communication policy under Article 10 and with regards to other aspects of interaction with the group during resolution planning and resolution management.

The role of third country resolution authorities in terms of communicating to the entities in their jurisdictions the decisions of the group (such as the group resolution plan, or MREL) is not included in the Consultative Document.

Q2: Do you have any suggestions regarding elements of the various joint decisions in resolution planning and in cross-border resolution?

We would suggest differentiating the roles of different players taking into account the resolution strategy adopted, i.e., single point of entry or multiple point of entry.

It should be clarified that for those banks with presence in Europe and in third countries, which have chosen the multiple point of entry resolution strategy, the joint decisions are made only at European level.