Deutsche Bank

EU Transparency Register ID Number 271912611231-56

Mr. Adam Farkas
Executive Director
European Banking Authority
Floor 46, One Canada Square
London E14 5AA
United Kingdom

Deutsche Bank AG
Winchester House
1 Great Winchester Street
London EC2N 2DB

Tel: +44 20 7545 8000

Direct Tel +44 20 7545 1903
Direct Fax +44 20 7547 4179

Dear Mr. Farkas,

DB response to the EBA's consultation on Draft Regulatory Technical Standards and guidelines on Business Reorganisation Plans under Directive 2014/59/EU (BRRD)

Deutsche Bank (DB) welcomes the opportunity to respond to the European Banking Authority's (EBA) consultation on the draft Regulatory Technical Standards (RTS) and guidelines on business reorganisation plans. The RTS identify the correct elements that need to feature in a reorganisation strategy.

We have two main comments. The RTS should acknowledge the difficult circumstances in which the reorganisation plan will have to be prepared. The context would be one of emergency which would be further complicated if management changes lead to a management structure with limited knowledge of the bank. With this in mind, we consider the timeframe for preparing the reorganisation plan very short but welcome the fact that the resolution authority can at least extend the period to up to two months. Furthermore in the event of a systemic crisis, any planning will have to be based on imperfect information of an unprecedented event, which will make any long term strategy difficult to re-define. The reorganisation strategy should therefore focus on 1) initially stabilising the bank and addressing any financial stability risk; 2) only once the bank is stabilised will it be in a better position to think about the long term.

The RTS does not contain much information on corporate governance. When preparing the reorganisation strategy, the management would need to engage and have an ongoing dialogue with key stakeholders, in particular credit rating agencies and the 'new' shareholders (bailed-in creditors). Third country resolution authorities might also want to have a say, which could make the process complex. We believe these stakeholders should be taken into account in the RTS.

We have provided detailed comments to your questions below. Please let us know if you would like more information or to discuss any of these points further.

Yours sincerely,

Daniel Trinder
Global Head of Regulatory Policy

<u>Draft Regulatory Technical Standards and guidelines on business reorganisation plans</u>

Q1: Do you consider it relevant to define that "reorganisation period"? Do you consider the current definition clear?

The EBA defines the "reorganisation period" as "the reasonable timescale by when the institution under resolution is expected to have restored its long-term viability and during which measures included in the Plan are implemented." This definition leaves room for interpretation; we recognise that it would be difficult to provide a more specific definition in regulatory technical standards. The reorganisation period will depend on the size of the bank, the seriousness of the situation and the wider economic context in which it operates when the bail-in tool is used.

As a general rule, we believe that it would be helpful to have a better understanding of the timetable with 1) the execution of the resolution strategy by the authority; 2) the independent valuation and in particular the prudent economic valuation; and 3) the reorganisation plan. In the context of this RTS, it would be useful for the EBA to clarify when the bail-in tool would be considered to have been applied. Is it only after debt has been written down and equity issued - which may take place after a long period of stabilisation (i.e. up to two months)? Or is it as soon as the bank is declared to have reached the point of non viability?

Finally, given that the reorganisation plans would have to be prepared under very difficult circumstances, we have some concerns around the reference to "long term" which is not defined in the BRRD. In the context of a systemic crisis, banks as well as supervisory and resolution authorities would have little visibility on the long term. It is unlikely that banks would be in a position to prepare a five year plan for instance. The reorganisation plan should therefore focus on stabilising the bank and restore its viability in the *foreseeable* future. We would recommend using the same wording as in the EBA's final RTS on the content of resolution plans and the assessment of resolvability, article 7(2) which makes reference to "*foreseeable* impediments to a business reorganisation".

Q2: Is the concept of "business line" sufficiently clear? Can measures and performance be provided at a "business line" level?

We understand the concept of business lines as the key divisions of the bank and we consider it particularly relevant for a reorganisation plan.

However, the concept of entity level is less relevant, especially for a Single Point of Entry resolution strategy. The focus should be on group level and Significant Legal Entities only, which are systemically relevant. This would ensure consistency with the spirit of the BRRD. The reorganisation plan should focus on key divisions of the bank, except where there is a specific change to other divisions or shortcoming which led to failure and need to be addressed in the reorganisation strategy.

Q3: Do you agree that an institution under resolution should use the reorganisation opportunity to address any shortcomings in the remaining business?

As a general principle, senior management focus on addressing strategic shortcomings on an ongoing basis, therefore the reorganisation plan will take this dimension into account.

Nevertheless, just after resolution, a bank's priority would be to define measures to stabilise the bank and prevent systemic risk. The focus would need to be on shortcomings, which may have led to failure or shortcomings impacting critical economic functions or core business lines.

Beyond this, the resolution authority does not have a mandate for making pronouncement on a bank's business model or business plan. Therefore, we consider that the RTS should not refer to "any shortcomings in the remaining business" which would go beyond the role of the resolution authority. Where there is no link to the causes of failure, authorities do not have the expertise to analyse whether aspects of the business are "shortcomings".

Q4: Is it appropriate to consider the impact of the reorganisation strategy and measures on the functioning of the financial system and the overall financial stability? Would it be appropriate to further detail the requirement regarding the impact of the reorganisation strategy on specific metrics, such as lending?

A bank would be able to share its views and comment on the impact on the financial system and the overall financial stability, but it would be difficult to quantify. The resolution and supervisory authorities would be better positioned to look at the wider impact, given that they have information on other institutions that might be facing difficulties at the same time.

The RTS should ask banks to look at the impact of the reorganisation strategy on critical economic functions, rather than the functioning of the financial system and the overall financial stability. We would also be able to look at the impact on lending for instance.

Moreover, the RTS require the Plan to set out the assumptions, regarding the expected macro-economic and market developments underlying the reorganisation strategy in a base case, and a comparison of those assumptions with sector-wide benchmarks. However, it is important to note that in the context of systemic financial crisis, there will not be reliable benchmarks available. In the middle of a crisis, there will be only very limited information available on market environment.

Q5: Is it feasible to obtain a commitment from the managers of the institution about the implications of the Plan and the appointment of responsible individuals in the institution for the implementation of the Plan?

The managers of the institution have to be responsible for the preparation of the reorganisation strategy and follow closely its implementation. We welcome the EBA's approach which draws on the experience of State Aid processes.

If a special manager was to prepare the reorganisation plan, we consider that the Plan would need to be revised and resubmitted when the special manager steps down and the new senior management is appointed. As stated above, the managers need to own the reorganisation strategy.

In terms of governance, it is important to establish a dialogue with shareholders. The new shareholders of the bank would have to be informed of the reorganisation plan as they would ultimately – once they recover their full voting rights - have the right to vote on the strategic direction of the bank at the Annual General Meeting (AGM). The bank would need to convince the new shareholders of the reorganisation strategy's efficiency, especially given the special nature of investors interested in an institution under resolution (i.e. investors able to take a countercyclical view and to absorb the volatility in a crisis).

Moreover, we recommend that Article 3 refers specifically to the independent valuer's valuation.

Finally, we would like to highlight that in order to facilitate the planning process the resolution authority should be as transparent as possible and work closely with the institution under resolution.

Q6: The BRRD requires a Plan to apply only in the event of use of the bail-in tool to recapitalize an existing institution. Are any of the provisions of the RTS and GL relevant in the event of use of the bridge institution tool, given the requirement that the resolution authority must approve the strategy and risk profile of the bridge institution? If so, which provisions do you consider relevant and why?

Although it would be logical and useful to do the same type of planning exercise in the event of use of the bridge bank tool, we do not think that it would be feasible to prepare a reorganisation plan under the same time constraints as required in the BRRD for use of the bail-in tool, especially given the complexity of setting up a bridge bank.