POSITION PAPER

ESBG response to the EBA consultation on draft Guidelines on triggers for use of early intervention measures pursuant to Article 27(4) of Directive 2014/59/EU

ESBG (European Savings and Retail Banking Group)

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Dear Sir/Madam,

Thank you for the opportunity to comment on the EBA consultation on *draft Guidelines on triggers for use of early intervention measures pursuant to Article 27(4) of Directive 2014/59/EU.*

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

Yes.

Question 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?

Based on the proposal that the definition of levels for the thresholds should be done by competent authorities, ESBG is concerned that this may lead to significant deviations in the application of the thresholds across jurisdictions. In this respect, we have identified two substantial aspects that would need more attention with regard to this consultation.

Firstly, the proposed approach could create severe management issues, especially within cross-border banking groups, where several subsidiaries might face different requirements by the respective responsible authorities.

Secondly, this approach may lead to regulatory arbitrage. In order to avoid this, ESBG suggests establishing a more detailed framework. For instance, we recommend a greater focus on peer groups, which can be dealt with within colleges. Peer groups have already been touched upon in para 19, page 13.

Another aspect we want to highlight is para 21, which suggests the monitoring of market-based and macro-economic indicators, for which we believe that thresholds should be established as well. Para 22, in contrast, allows individual authorities to exclude such indicators if they are deemed not relevant for a specific institution. ESBG is concerned about the use of market-based indicators as these are often influenced by factors that are not related to the idiosyncratic situation of an institution, and as such could lead to wrong signals and hence wrong decisions and/or measurements.

The inclusion of market-based and macro-economic indicators in the approach for detecting material deterioration or anomalies (see para 4(b) of the Guidelines) is confusing. Even deteriorations in market-based or macro-economic indicators do not necessarily point to a "worsening of the institution's financial condition and/or risk profile that may develop into a serious threat to its safety and soundness", as suggested by the definition. Therefore, ESBG recommends an adjusted approach that takes into account the described problem, e.g. by including a cross-check with other parameters before applying predefined measures. This aspect becomes even more relevant as we talk about interference in businesses at a point in time where it is not yet fully clear whether an institution will improve or worsen its situation.

Another aspect, which is described in para 25, addresses measures that are applied right at the moment of a certain indicator's appearance. This process might be sufficient for some indicators. However, a general automatism could be problematic. Particularly in cases where macro-economic indicators are used, a further detailed assessment of the necessity and intensity of measures, possibly in combination with a short-term request at the institution, seems to be appropriate.

Para 26 states that where a trigger of 1.5% above the institution's own funds requirements is set for early intervention, this should not only consider minimum (Pillar 1) own funds requirements but also a trigger of 1.5% above SREP (Pillar 2) capital requirements in accordance with Article 104(1)(a) CRD IV. ESBG disagrees with this specification as it would require banks to effectively operate above their SREP ratio at all times. This would lead to a significant increase in requirements. Furthermore, in some jurisdictions, the SREP ratio includes buffers for macro-economic risks and stress losses and it seems unreasonable not to allow an institution to use these buffers in times of stress due to an early intervention trigger being set at a level well in excess of the SREP ratio.

Question 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?

Para 31 indicates that the determination of an institution as failing or likely to fail should represent a significant event under the early intervention framework. However, it is not clear how this determination could lead to the application of early intervention measures before resolution actions as the trigger for resolution would be already reached. This requires resolution actions instead of early intervention measures (Article 32 of the BRRD requires authorities to take resolution actions if the resolution triggers are met.).

Presumably the only circumstances where the application of early intervention measures could be justified at this stage is where these measures are deemed to be a possible means to avert failure in line with Article 32(1)(b) BRRD. In this connection, ESBG asks for a clarification in the proposed Guidelines.

About WSBI-ESBG (European Savings and Retail Banking Group)

ESBG brings together savings and retail banks of the European Union and European Economic Area that believe in a common identity for European policies. ESBG members support the development of a single market for Europe that adheres to the principle of subsidiarity, whereby the European Union only acts when individual Member States cannot sufficiently do so. They believe that pluralism and diversity in the European banking sector safeguard the market against shocks that arise from time to time, whether caused by internal or external forces. Members seek to defend the European social and economic model that combines economic growth with high living standards and good working conditions. To these ends, ESBG members come together to agree on and promote common positions on relevant matters of a regulatory or supervisory nature.

ESBG members represent one of the largest European retail banking networks, comprising of approximately one-third of the retail banking market in Europe, with total assets of over €7,300 billion, non-bank deposits of €3,480 billion and non-bank loans of €3,950 billion (31 December 2012).

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