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***Launched in 1960, the European Banking Federation is the voice of the European banking sector from the European Union and European Free Trade Association countries. The EBF represents the interests of some 4,500 banks, large and small, wholesale and retail, local and cross-border financial institutions. Together, these banks account for over 80% of the total assets and deposits and some 80% of all bank loans in the EU alone.***

## EBF Response to Consultation paper on Draft Regulatory Technical Standards and Draft Guidelines specifying the conditions for group financial support under Article 23 of Directive 2014/59/EU and Draft Implementing Technical Standards on the form and content of disclosure of financial support agreements under Article 26 of Directive 2014/59/EU (EBA/CP/2014/30)

General Comments

*Background*

The draft RTS/ Guidelines may be of significant importance for jurisdictions that already have restrictive provisions concerning intra-group support in the case of a crisis. Examples for those jurisdictions are listed up on page 29. For example, the Portuguese supervisory authorities may decide that transfers must be previously authorized. In some MS (e.g. Spain) there are provisions which require direct or indirect fair compensation for the entity which provides the support (in order to prevent potential abuses). Poland requires sufficient credit worthiness from borrowers.

*General objective*

The rationale of the BRRD provisions (and the related EBA GL and RTS) is to harmonize the conditions national competent authorities have to assess when permitting an affiliated entity to provide intra-group financial support to another entity of the group meeting the early intervention preconditions. By this, counterproductive ring-fencing of capital and liquidity should be avoided and an optimal allocation of liquidity in cross border groups in financial distress should be safeguarded. Therefore the guidelines define common criteria under which the NCA may refuse the approval of an intra-group support measure in case the receiving entity is under stress (i.e. fulfils the criteria for early intervention). Generally, the measure has to prove suitable to redress the financial difficulties and it must not jeopardize liquidity, solvency or resolvability of the providing entity. In order to achieve this task, EBA discusses several methods ("policy options") to assess the potential impact of the granting of intra group financial support (like formal stress tests of the providing, credit assessments of the receiving part and respectively more discretionary procedures and potentially different treatment of upstream/ downstream and horizontal support measures).

*Industry perspective*

Specific national provisions, which entitle the NCA to prohibit intra-group financial support in a crisis (status quo), may lead to ring fencing. If a NCA is granted discretion to intervene against intra-group support measures, it might be unjustified cautious or strict in a crisis situation in order to protect its national entity not appropriately taking into account the negative consequences for the receiving entity abroad or for the group as a whole. Against this background it seems at least in the interest of branches and subsidiaries of banks located in countries with potential restrictions for intra-group support that the respective NCA can only contradict the support on the basis of transparent and EU- wide accepted common criteria. This is also desirable for the parent institutions which have an interest to provide support to avoid reputational damages for the group.

However, the BRRD provision and the corresponding EBA guidelines only refer to the case that the receiving (or also the providing) part is already in a situation that requires early intervention measures. Outside a crisis, there is no general regulatory requirement for an approval by the NCA within the large exposure limits (and the arrangement stays of course legally binding also in a crisis situation). This is particularly important because cross-border groups need intra-group arrangements like guarantees in order to facilitate a single point of entry resolution approach.

Finally. it should be clear that authorities should not be able to require banks to adopt these agreements. To this end the EBA makes a welcome comment in the background section that these do not affect any existing contractual or statutory liability arrangements between institutions - e.g. existing waivers etc. We encourage the EBA to make this also explicit in the RTS (e.g. in a recital) and in the guidelines.

*Conclusion*

There may be no need for action, because:

* For entities located in or with connection to countries in which support restrictions have been already in place before the BRRD entered into effect, the alignment and objectivization of criteria is positive or at least neutral,
* For entities located in or with connection to countries in which those restriction were not in place yet, the intervention right is already created in the Level 1 text (Art. 19 ff.) and the guidelines do not create an additional disadvantage,
* For the participating Member States the problem may also be mitigated when the SRM has become operative (reducing the danger of ring fencing by a heterogeneous administrative practice).

Answer to specific questions

**Question 1: Are there further elements of a credit assessment which would be useful in this context when assessing whether the financial support is expected to redress the financial difficulties of the receiving entity and the further conditions (e.g. the terms of the provision of the support and the prospect of the payment of consideration and repayment)? Please specify.**

No comment.

**Question 2: How could the interest of the providing entity and the group as a whole be measured and reflected in the terms of the provision of the support? What information could be used to inform the assessment of the terms, also with respect of non-quantifiable costs and benefits?**

* Past performance of receiving entity can be used for assessment.
* Reputational impact of allowing a subsidiary to fail should be considered.

**Question 3: What rules do you deem appropriate for capital requirements? Do the criteria reflect an adequate balance between the interest of the group as a whole and safeguards required for the individual entities? Are there additional criteria that should be considered?**

* Maintaining BAU capital limits e.g. large exposures will limit the amount of group support that can be provided.

**Question 4: How will the rules for capital requirements, in particular regarding upstream support, impact management decisions on the structure the group? If you see a negative impact, how could this be mitigated?**

* As above, authorities should consider allowing temporary breaches of ratios to enable provision of group support to the extent required by receiving entity.

**Question 5: What rules do you deem appropriate for liquidity requirements? Do the criteria reflect an adequate balance between the interest of the group as a whole and safeguards required for the individual entities? Are there additional criteria that should be considered?**

* See comments for questions 3 and 4

**Question 6: How will the rules for liquidity requirements, in particular regarding upstream support, impact management decisions on the structure the group? If you see a negative impact, how could this be mitigated?**

* The rules may encourage regional funding models vs. centralised funding models. This needs to be considered in context of appropriate resolution strategy (ie SPE or MPE)

**Question 7: Should a description of additional terms be disclosed? Are there any elements that in your view should not be disclosed?**

No comment.