

To
European Banking Authority
Floor 46
One Canada Square
Canary Wharf
London E14 5AA
(submitted via EBA website)

Subject
Reaction ING Bank to EBA/CP/2014/22: Draft guidelines on
the interpretation of the different circumstances when an
institution shall be considered as failing or likely to fail under
Article 32(6) of Directive 2014/59/EU

Date
8 December 2014

Introduction

Please find the response of ING Bank N.V. to the European Banking Authority (EBA) consultation paper on interpretation of the different circumstances when an institution shall be considered as failing or likely to fail pursuant to Article 32(6) of Bank Recovery & Resolution Directive (BRRD, Directive 2014/59/EU).

ING Bank welcomes the opportunity that EBA offers to share our view on the draft guidelines on the interpretation of the different circumstances when an institution shall be considered as failing or likely to fail. Please find our response to the specific questions posed below.

Question 1: Do you have any general comments on the draft Guidelines for determining that an institution is failing or likely to fail?

This consultation is in our view closely related to the consultation on triggers for the use of early intervention measures EBA/CP/2014/21. We considered the SREP assessment not appropriate as a basis for imposing early intervention measures, by the same token we consider the SREP assessment not appropriate for classifying an institution as failing or likely to fail either.

Classifying an institution as failing or likely to fail will probably have severe implications. The significance of the classification is critical as it could trigger debt conversion into capital and eventually write-off via the comprehensive bail-in tool. As a result, the intrinsic value of debt

instruments could be affected. These facts require careful consideration when classifying an institution as failing or likely to fail and any further impact it might have on other banks and the market.

We do promote the convergence of supervisory and resolution practices as increased cooperation between the resolution and competent authority prevents inconsistencies and yields more efficiency in both the supervisory and resolution processes. We are, however, of the opinion that classifying an institution as failing or likely to fail should be done under regular supervisory practices and should therefore be done at the sole discretion of the competent authority. Once the competent authority has classified an institution as failing or likely to fail, the resolution authority takes over and subsequent measures can be taken that are in the domain of the resolution authority.

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

The level of detail in the draft guidelines is considered appropriate but should for the most part be aimed at the competent authority.

Question 3: Do you consider the examples provided in Box 2 to be sufficiently clear and providing useful guidance?

Three examples are given in Box 2, which in itself are useful, but seem to be examples that might call for early intervention measures rather than classifying an institution as failing or likely to fail.

The first example describes an institution that initiates its recovery plan and is expected to recover based on the plan. When the recovery plan is not sufficient, early intervention measures could still be imposed.

The second example describes an institution that faces IT-issues. The IT-issue does not pose an immediate threat to financial instability but could very well be reason for early intervention measures to prevent similar issues in the future.

The third example describes a very small institution that should not even be in scope of a resolution authority as it does not impose a threat to financial instability and can be wound down under normal insolvency proceedings.

Question 4: Do you have any comments on the proposed specification of circumstances which should be taken into account by the competent authority in determining that an institution is failing or likely to fail?

ING is of the opinion that the proposed specification of circumstances which should be taken into account by the competent authority in determining that an institution is failing or likely to fail should not be based on SREP-scores and outcomes. An institution should be classified as failing or likely to fail when an institution:

- has activated its recovery plan, based on which early intervention measures might have been imposed, but the institution has failed to recover;
- values the assets of the institution as less than its liabilities or that this is likely to occur in the near future and an independent valuer has confirmed the valuation;
- considers itself failing or likely to fail.

Question 5: Do you reckon that a significant decrease in asset value can be predefined in a quantitative manner? If yes, which threshold would you suggest for that purpose?

ING is of the opinion that quantified hard triggers are difficult to define and should not be the basis for classifying an organisation as failing or likely to fail. Such classification should always be based on thorough investigation, dialogue between the parties involved and expert judgement rather than competent authorities limiting themselves to defining hard triggers.

Question 6: Do you have any comments on the proposed specification of objective elements related to the capital position which should be taken into account by the resolution authority in determining that an institution is failing or likely to fail?

Question 7: Do you have any comments on the proposed specification of objective elements related to the liquidity position which should be taken into account by the resolution authority in determining that an institution as failing or likely to fail?

Question 8: Do you have any comments on the proposed specification of the circumstances, related to governance arrangements, which should be taken into account by the resolution authority in determining that an institution is failing or likely to fail?

Question 9: Do you have any comments on the proposed specification of the circumstances, related to the institution's operational capacity to provide regulated activities, which should be taken into account by the resolution authority in determining that an institution is failing or likely to fail?

Questions 6 through 9 are all aimed at the resolution authority. ING is of the opinion that classifying an institution as failing or likely to fail should be done under regular supervisory practices and should therefore be done at the sole discretion of the competent authority. These guidelines should therefore be considered by the competent authority.

Question 10: Do you agree with our analysis of the impact of the proposals in this Consultation Paper? If 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?

The approach aims at ensuring a continuum between normal supervision, early intervention and resolution phases, while taking into account specific characteristics of the EU national banking sectors.

ING is of the opinion that normal supervision and early intervention are stages that should be done by the competent authority. When the competent authority has classified an institution as failing or likely to fail based on the conditions mentioned under question 4, the resolution authority should take over. A clear distinction at this point is desirable to avoid double supervision, unclear division of tasks between the competent authority and the resolution authority and to avoid the risk that the resolution authority takes up a role in daily supervision.
