POLISH BANK ASSOCIATION

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European Banking Authority

Subject: Polish Bank Association response to EBA consultation on Draft Guidelines on triggers for use of early intervention measures pursuant to Article 27(4) of Directive 2014/59/EU (EBA/CP/2014/21)

Dear Sirs,

Polish Bank Association welcomes the opportunity to comment the EBA consultation paper related to the Draft Guidelines on triggers for use of early intervention measures pursuant to Article 27(4) of Directive 2014/59/EU. We are convinced that the subject raised in this document is very important for stability of whole financial market and is fundamental for right process of decision – making for any recovery action. The appropriate definition of indictors should allow in the future to concentrate the accessible resources in the right place and in the right time for high effectiveness of banking recovery.

General Comments

The guidelines on triggers for use of early intervention measures are in our opinion a crucial part in the supervisory framework. The early intervention tools will play a critical role in maintaining of the stability of whole financial market and they will be the last action which can be taken on individual level before resolution. That is why we believe it is essential for these guidelines to provide sufficient and clear provisions in order to avoid early intervention being introduced too early in the recovery process or too late.

The draft of guidelines does not identify in fact the triggers for early intervention but rather the triggers for taking the decision of whether to apply early intervention measures or triggers requiring further investigations. This approach has advantage because it allows to apply elastic solution in individual situation of institution. But at same time it does not deliver clear answer in which situation the early intervention measures should be applied. It generates bigger risk that the mistake can be made in process of assessment of the institution.

In our opinion there is logical link between an early intervention measure and the SREP framework, proposed in draft guidelines. Nevertheless, the level of dependence of decision-making on the results of SREP assessment is too high. The draft includes also two other types of triggers as material deterioration or anomalies identified in the monitoring of key indicators and significant events. But they can be treated only as pre-triggers because the process of decision – making should be initiated after the change in SREP assessment. In our opinion occurrence of some material deterioration or anomalies can be sufficient trigger to make decision concerning application of early intervention measures.

We would like to stress also the big role of permanent dialogue between the supervisor and institutions. This dialogue should allow to assess correctly the current situation of each institution and to choose the best form of remedies which should be undertaken against the problems of individual institution.

Therefore, in our opinion the proposed approach can be seen as too simplified solution, particularly in first past of guidelines where the concrete score of the SREP is indicated as the unique and nearly binding trigger for applying the early intervention measures (e.g. the overall SREP score of '4').

On the one hand it is confirmed by the EBA in the paper that triggers provided in these guidelines do not oblige competent authorities to automatically apply early intervention measures in any case, but on the other hand it is the objective of guidelines to introduce triggers to help competent authorities to decide whether to apply early intervention measures and to implement consistently these tools across EU.

We welcome the EBA approach that the guidelines do not establish any quantitative thresholds for indicators that could be perceived by institution as new form of sui generis regulatory requirements in area of capital or liquidity.

Answer to specific questions

Q1: Do you have any general comments on the draft Guidelines on triggers for the use of early intervention measures?

We welcome the confirmation in paragraph 7 of the draft guidelines that breach of triggers should not automatically lead to the application of early intervention measures but rather prompt further to investigate and consider situation by the competent authority. We think this consideration should also include an assessment by the competent authority as to whether the issue identified by the concerned indicator is being already adequately addressed by the institution, for example through activation of its recovery plan or other action.

The consultation seems to acknowledge the SREP timing issue by saying authorities do not have to wait for the SREP assessment to be updated on one year basis but the authorities can use the quarterly monitoring of SREP indicators or other 'significant events' as indicators. However, this does not seem to cover completely any circumstances which can occur between the ends of following quarters. In concrete situation of individual institution it can be reasonable to make these analyzes immediately.

It should be noted that according to the current SREP consultation this system must be implemented by 1 January 2016 and this date is later than the date in comparison to date when the BRRD must be applied by Member States. This means the SREP guidelines may not have been incorporated into their supervisory processes and procedures in initial period of BRRD application.

Q2: Do you consider the level of detail used in the draft Guidelines to be appropriate?

The proposed level of detail included in the draft guidelines can be recognized as generally appropriate. However, we recommend to level of details in different part of guidelines. This level is quite high in SREP area but is simultaneously much lower in area of material determination or anomalies of key institution indicators.

Q3: Do you have any comments on the proposed specification of early intervention triggers based on the outcomes of SREP?

The interaction between supervisory measures imposed in response to the SREP assessment and those imposed as early intervention measures should be carefully considered. While the outcome of

SREP assessments is a relevant consideration when competent authorities are considering taking early intervention action, we see early intervention as a distinct process with a different purpose. Therefore, a particular SREP score should not automatically lead to early intervention measures being taken.

Q4: 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?

As we expressed earlier the scale of indicators (indicated in paragraph 21) to be monitored for early intervention purpose is very broad. We would like to remind that we have the occasion to comment simultaneously the EBA draft guidelines concerning the quantitative and qualitative indicators used for recovery plan (EBA/CP/2014/28). We recommend strongly to link these requirements flowing for banks from these guidelines with triggers for early intervention tools. In our opinion nearly all indicators set up for recovery plan on individual level could be used as the rational trigger for early intervention measures. As in the draft of guidelines on the quantitative and qualitative indicators used for recovery plan we are quite pessimistic in applying the macro-economic indicators for early intervention measures.

We have a particular concern about the provision of paragraph 26 of the draft guidelines. Though the EBA mentions the guidelines do not establish any quantitative thresholds for indicators that could be perceived as new levels for regulatory requirements for capital or liquidity, however we are scared the provision of this paragraph may inevitably create a new capital requirement, which is not consistent with EBA's initial statement.

We also believe there are potential unintended consequences of this proposed trigger. We are concerned that including it in the guidelines would hard-wire the level of total capital plus 1.5% in the single rulebook and in practice create a new regulatory capital buffer. The trigger for early intervention should be consistent with the supervisory powers under article 102 of Capital Requirement Directive IV ('CRD IV' No 2013/36) which is set at the total capital level (including Pillar 2 and buffers). It would not be consistent with article 27(1) of BRRD, to impose early intervention measures at an earlier stage than supervisory powers under articles 102 and 104 of CRD IV. Furthermore, breaches of buffers are regulated separately according to CRD and should not per se be subject to additional early intervention measures according to BRRD.

Q5: 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?

We agree that certain events bear a risk of significant prudential impact on the institution and they should be considered as a trigger requiring further investigations. In this regard the text should be aligned with article 27 §1 of BRRD and should clearly state that early intervention measures may only be taken where the relevant "significant event" would leads to the institution infringing or being likely to infringe the requirements set out in Article 27§1 of BRRD.

Nevertheless, the examples of significant events which should be considered as possible triggers for the decision whether to apply early intervention measures contained on pages 15 and 16 after paragraph 30 may be considered also as the type of events which would also prompt the institution to consider implementing its recovery options. We think that bank management should be primarily responsible for ensuring the bank recovers from significant events. Early intervention should only be applied where a firm does not implement recovery measures or they fail.

We are also cautious to link automatically linking ratings downgrades with early intervention triggers. We have to remember that rating downgrade can occur automatically as a consequence of downgrade in sovereign credit ratings of the country where institution has its headquarter. It occurs independently of the domestic exposure of each institution. Therefore, the proposed wording of this significant event is in our opinion too broad.

Q6: 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?

We have no remarks to this question.

Your sincerely,

Krzysztof Pietraszkiewicz

President