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FBF Response to the EBA consultation paper related to draft guidelines for use of early intervention measures pursuant to Article 27(4) of Directive 2014/59/EU

The French Banking Federation (FBF) represents the interests of the banking industry in France. Its membership is composed of all credit institutions authorized as banks and doing business in France, i.e. more than 390 commercial, cooperative and mutual banks. FBF member banks have more than 38,000 permanent branches in France. They employ 370,000 people in France and around the world, and service 48 million customers.

The French Banking Federation welcomes the opportunity to share its view on this draft guidelines consultation paper related to triggers for early intervention purposes, as it is envisaged in the BRRD. We believe that the early intervention phase is critical and constitutes the last resort before taking any resolution action. Therefore it is essential that these guidelines provide sufficient and clear provisions in order to avoid that early intervention is eventually only used as a pre-resolution phase.

Regarding the proposed guidelines, while we consider it appropriate to link an early intervention measure to the SREP framework, we underline the importance of a dialogue between the supervisor and institutions in the process of assessing the situation and the remedial actions already undertaken. Therefore we support the overarching principle set out by the EBA that early intervention measures should not be taken automatically according to the score attributed following the SREP (e.g. the overall SREP score of “4”). We also welcome EBA’s stating that the guidelines do not establish any quantitative thresholds for indicators that could be perceived as new levels for regulatory requirements for capital or liquidity, as we deem this a crucial principle.

Generally speaking, we would be supportive of an EBA approach that sticks closely to the level one text, and does not depart from it. This is particularly true of article 27 (1) of BRRD, which refers to triggers potentially including 1.5% above an institution’s own funds requirement. We believe that it would not be consistent with this article to impose early intervention measures at an earlier stage than supervisory powers under articles 102 and 104 of CRD IV.

Questions related to the draft Guidelines

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

As already stated in our introduction we welcome the confirmation in paragraph 7 of the draft guidelines that breaching triggers should not automatically lead to the application of early intervention measures, but rather prompt further investigation and consideration by the competent authority, to assess if the institution has addressed adequately the identified weakness.

In addition, while we consider it appropriate to link early intervention to the assessment performed in the SREP framework, we would like to stress the importance of the dialogue between institutions and their competent authority, as an essential part of the SREP. However, the proposed guidelines remain silent on it. It is our view that the guidelines should emphasise this crucial dialogue as a key aspect of the assessment for early intervention.

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

We consider that the level of detail in the draft guidelines is generally appropriate.

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 view 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?

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, we believe however that the provision of this paragraph creates inevitably a new capital requirement, which is not consistent with EBA's initial statement.

In fact article 27(1) of BRRD refers to triggers potentially including 1.5% above an institution's own funds requirement. For these purposes an institution's own funds requirement is defined as the requirements in articles 92 to 98 of the Capital Requirements Regulation (No 575/2013).

While we recognise that an indicator based upon total capital requirements including buffers may make more sense than 9.5% (i.e. 8% of total capital requirements according to CRR articles above + 1.5%) for banks that have buffers and Pillar 2 requirements, we believe it is necessary to consider the potential unintended consequences of this proposed trigger. We are concerned that this would hard-wire the level of total capital plus 1.5% in stakeholders' minds and in practice create a new regulatory capital buffer.

Further, we believe that 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.

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 bearing a risk of significant prudential impact on the institution should be generally 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 have to be taken where the relevant "significant event" leads to the institution infringing or being likely to infringe the requirements set out in Article 27(1) of BRRD.

Questions related to the Impact Assessment

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 don't have any comments on this topic.