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EACB comments on EBA draft Revised Guidelines on recovery plan indicators under Article 9 of Directive 2014/59/EU (EBA/DP/2021/13)

General comments

The EACB welcomes the opportunity to comment on the draft EBA GLs on recovery plan indicators under Article 9 BRRD.

As a general comment regarding liquidity indicators, we would highlight that the current indicators are based on available figures which are subject to regulatory reporting. We believe that introducing new and unspecified indicators would not provide any added value. Instead, the existing well-established metrics are familiar to supervisory authorities and institutions alike and should therefore continue to be used as recovery indicators. Well-established and consistently reported figures enable the supervisory authorities to continuously monitor the situation of the institution and allow meaningful comparisons across institutions.

Recovery indicators should generally directly build on available regulatory reporting to give reasonable workload to both supervisory authorities and institutions, therefore we see that the proposed indicator for the minimum list "*c) Available unencumbered assets central bank's eligible*" should be adjusted in order to align it with the Asset Encumbrance Ratio already reported.

Q1 *Do you have any comments on the general requirements that should drive the calibration of recovery indicators as proposed in paragraph 27 of these guidelines?*

The notion of "overall recovery capacity", i.e. the capability of restoring the financial position of an institution or of a group in their entirety following a significant deterioration, plays an important role in the economy of the thresholds to be determined for the indicators. The higher the recovery capacity, the more the institution has the possibility to set thresholds close to the regulatory minimum. The lower the recovery capacity, the more the institution is forced to set thresholds at a greater distance from the regulatory minimum. In light of this mechanism, the overall recovery capacity should be better contextualized.

Moreover, although recovery indicators are not regulatory requirements, and even though institutions have discretion to act when thresholds are breached, such breaches still trigger a formal process of interaction with the supervisor. Therefore, the thresholds would act as a "psychological barrier", leading institutions to operate far above the regulatory requirements, which raises questions in terms of optimal capital allocation and economic efficiency.

Q2 *Do you have any comments on the requirement that there should be no automatic recalibration of recovery indicators upon the application of temporary supervisory relief measures, however it could be allowed by competent authorities in those cases specified in paragraph 31 of these guidelines?*

Regarding the requirements for the calibration of indicators, the EBA states that these indicators, especially those referring to capital, must be calibrated at levels exceeding the relevant amount of own funds required pursuant to Parts Three, Four and Seven of Regulation CRR, Chapter 2 Securitisation Regulation ((EU)

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2017/2402), point (a) of Article 104(1) CRD as relevant. This general indication does not clarify how to deal with some regulatory requirements, e.g. Pillar 2 Guidance (P2G). In fact, as things stand, it would mean that institutions would have to benchmark their capital indicators with thresholds higher than P2G.

In addition, as already mentioned, while the indicators do not have the nature of regulatory requirements, in practice they lead to higher requirements.

What has been said for P2G can also be referred to the minimum requirement of own funds and eligible liabilities (MREL).

Q3 *Do you have any comments on guidance introduced in relation to actions and notifications upon breaching recovery indicators, including the proposed timelines for internal escalation and notification to the competent authorities?*

NA

Q4 Do you have any comments on introducing a possibility for competent authorities to request institutions to provide a full set of recovery indicators (breached or not)?

NA

Q5 Do you have any comments on the proposed threshold calibration of regulatory capital indicators at levels above those requiring supervisory intervention and therefore to be generally calibrated above the combined capital buffer requirement while still allowing calibration within buffers only under certain conditions?

With reference to para. 46 of the draft revised GL, and in accordance with para. 45, we would like to point out that the combined buffer requirement (CBR) should not be included in the MREL for several reasons. First, according to the BRRD 2 the CBR itself is no longer included in the MREL calibration. Second, any additional need for MREL is already reflected in the market confidence charge (Art. 45c BRRD 2).

Furthermore, there is no automatism for dividend-payment restrictions in the event of breaching capital buffers. Also, the effect of breaching capital buffers differs among institutions. Some institutions may not rely on the payment of dividends, others may not even pay dividends at all. Therefore, we believe para. 46 should be amended. The following passage "*The threshold should be generally calibrated by the institution above the combined buffer requirement when considered in addition to (i) the TLAC minimum requirement and (ii) the final MREL or the binding intermediate target levels of MREL (if different) expressed as % of TREA.*" should be deleted as the MREL threshold for recovery planning should be determined without taking into account the CBR, as it is the case with MREL calibration in general according to the BRRD 2.

Capital buffers are designed for proactive and countercyclical management of macroeconomic crisis. Therefore, they can support bank lending in times of stress and the use of buffers in crisis is not only allowed, but encouraged by supervisory authorities, as shown in the context of the Covid-19 crisis.

Moreover, clarification is needed regarding what is meant by "including subordination requirement" in para. 46. Annex II – Minimum list of recovery plan indicators only refers to MREL and where relevant TLAC. We see benefit in clarifying that this indicator does only refer to MREL as indicator, not to any subordination requirement. The rationale of MREL is to sustain sufficient loss absorption and recapitalisation capacity in preparation of a potential future resolution. The reason for requiring subordination requirements however is to ensure there is sufficient capacity in a certain creditor hierarchy layer to reduce the risk of breaching the No-Creditor-Worse-Off principle. Subordination is designed to avoid this occurrence (SRB, MREL Policy under the Banking Package para 57). The subordination requirement was not intended to shift the obligations of the SRF (pay compensation to shareholders or creditors who incurred greater losses than under normal insolvency proceedings) to recovery planning.

Therefore, we think the EBA should clarify in para. 46 that subordination requirements are not meant as recovery indicator.

In general, we believe the CBR is no suitable recovery indicator or part of a recovery indicator. As described above, capital buffers are designed for proactive and countercyclical crisis management. Therefore, they can support bank lending in times of stress and the use of buffers in crisis is not only allowed but encouraged by supervisory authorities. If the supervisory authorities allow the use of capital buffer like they did in the recent crisis, the recovery plan and recovery indicators would have to be changed. Additionally, the supervisory authority would have to be notified. We do not believe this complex process would be beneficial for both the supervisory authority monitoring the recovery and credit institutions drawing up recovery plans in crisis.

Referring to para. 44 we do not support the wording proposed. The aim of the paragraph should only be to allow institutions any actions prior to early intervention measures, as rightly indicated when referring to the "*flexibility given to the institution to act independently when breaching indicators*", therefore referring to "*supervisory intervention*" is too far reaching and would lead to legal uncertainty. Supervisory intervention can occur in several situations and in many ways, thus it is not clear what kind of interventions are addressed. Also, we see some discrepancies with Art. 5 BRRD. According to Art. 5 BRRD recovery plans shall also include possible measures which could be taken by the institution where the conditions for early intervention under Art. 27 are met. Therefore, a recovery option may even be intended to be applied as an early intervention measure.

In addition, there is a general feeling that the triggers for supervisory actions are not sufficiently clear to comply with para. 44. While this may provide the authority with a certain degree of flexibility it also leads to the situation where it would not be possible to determine recovery indicators that will certainly be higher than those for supervisory actions. Therefore, we believe that this sentence should be deleted.

Finally, we do not see the merit of the proposed change when calibrating the capital indicators. The existing Guidelines state that the thresholds for indicators based on regulatory capital requirements should be calibrated by the institution at adequate levels in order to ensure a sufficient distance from a breach of the capital requirements applicable to the institution (i.e. including minimum own funds requirements as specified in Article 92 CRR and additional own funds requirements applied pursuant to Article 104(1)(a) CRD but without taking into account any buffer requirements set out in Chapter 4 of Title VII of CRD). The revised Guidelines now indicate (Para. 45) that capital indicators should be calibrated above the combined capital buffer requirement. Para. 13 of the Rationale does not provide sufficient explanation for such change. Therefore, it should be clarified, that the trigger for recovery can be set within the combined capital buffer requirement, the early warning trigger could be above so that the institution has enough time to react and decide if it is necessary to take actions or not. We believe that the system should be flexible to enable a reflection of the diversity of the institutions. Particularly regarding recovery indicators there is no one size fits all.

Q6 Do you have any comments on the proposed calibration of the recovery threshold for MREL?

See Q5.

Q7 Do you have any comments on the proposed threshold calibration of regulatory liquidity indicators (LCR and NSFR) above their minimum regulatory requirement i.e. 100%?

Paragraph 12 of the Background and Rationale and para. 54 of the revised Guidelines require that the thresholds for capital and liquidity indicators should be generally established sufficiently above regulatory requirements. This may be true for capital indicators, but liquidity indicators already include buffers (the LCR is a stressed requirement) and there would be no particular need to go mandatorily above the requirements. It should be clarified that the trigger for recovery can be set an 100% whereas the early warning trigger will be above 100%, so that the institution has enough time to react and decide if it is necessary to take actions or not.

Q8 Do you have any comments on the proposed threshold calibration for the indicator of liquidity position?

As briefly illustrated in the opening section, we do not see the added value from the new indicator "liquidity position", as there are enough short-term and long-term indicators already. The LCR is an appropriate indicator for the short-term liquidity position and the NSFR currently adequately covers the long-term liquidity position. Moreover, "liquidity position" is not a defined ratio used in other regulations or directives which could lead to unwarranted misunderstandings. Therefore, we believe that "liquidity position" should be removed as it is not beneficial for neither the supervisory authority nor the institution due to uncertainties regarding the composition of the metric. In addition, while a sudden short-term liquidity shock would lead to a liquidity crisis, the existing indicators ensure that a proper monitoring would provide sufficient time for measures to intervene and counteract in case of deterioration.

Q9 Do you have any comments on the proposed changes to the minimum list of recovery plan indicators?

NA

Q10 Do you have any comments on the impact assessment?

NA

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