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EBF Response to Consultation paper 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)

General Comments

The European Banking Federation welcomes the opportunity comment on the EBA consultation paper related to triggers used for early intervention purposes.

The EBF considers that the draft guidelines on triggers for use of early intervention measures is a central part of the supervisory framework. The early intervention phase will be a critical tool, but it should be the last resort before taking any resolution action. That is why European banks 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 so that early intervention is reduced to a pre-resolution phase.

Regarding the proposed guidelines, it makes sense to link an early intervention measure with the SREP framework, but one should not forget the dialogue between the supervisor and institutions to assess the situation and remedies undertaken. Therefore, early intervention measures should not be taken automatically according to the score attributed following the SREP (e.g. the overall SREP score of '4').

It is confirmed by the EBA in the paper, where it states that triggers provided in these guidelines do not oblige competent authorities to automatically apply early intervention measures in any case. However, on the other hand it is the objective to introduce triggers to help competent authorities to decide whether to apply early intervention measures with the aim of introducing a consistent approach for the decision on the application of early interventions across EU.

Moreover, we welcome that 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 think this is an important principle.

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 breaching triggers should not automatically lead to the application of early intervention measures but rather prompt further investigation and consideration 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 adequately addressed by the institution already, for example through activation of its recovery plan.

In addition if we consider relevant to link early intervention with 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 and on the framework supporting it. It is our view that the guidelines should emphasise this crucial dialogue as a key aspect of the assessment for early intervention.

The consultation seem to acknowledge the SREP timing issue by saying authorities do not have to wait for the SREP assessment to be updated but can use the quarterly monitoring of SREP indicators or other 'significant events' as indicators. However, this does not seem to cater for circumstances which could occur between quarters but are not one-off significant events.

It should be noted that the SREP consultation says the SREP guidelines must be implemented by 1 January 2016, which is after the BRRD must be applied by member states. This means the SREP guidelines may not have been incorporated into their supervisory processes and procedures before this Paper requires them to be used for the purposes of the BRRD.

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

The European Banking Federation considers that the level of detail used 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 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?

The EBF has a particular concern about the provision of § 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.

While article 27 §1 of BRRD refers to quantitative triggers, which may include 1.5% above an institution's own funds requirement, the EBA should avoid tying supervisory early intervention action to specific quantitative thresholds. An institution's own funds requirement is defined as the requirements in articles 92 to 98 of the Capital Requirements Regulation (No 575/2013). Supervisory authorities may consider a trigger with Pillar 2 requirements at 9.5% (i.e. 8% of total capital requirements according to CRR articles above + 1.5%) or may choose one based upon total capital requirements including Pillar 2 requirements, but this is for individual supervisors to determine, not the EBA.

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?

European banks 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 may only be taken where the relevant "significant event" would lead 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 the type of events which would also prompt the institution to consider implementing its recovery options. As there is no requirement for the competent authority to consult before applying early intervention measures it is possible that the competent authority may unilaterally go from business as usual considerations (SREP) to preparing the institution for resolution. We do not think this is appropriate, as 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 have not worked. We would therefore welcome either the removal or further definition of the illustrative significant events in the draft guidelines to enhance the institution's own recovery planning efforts. Given the time, effort and resources put into recovery plan development, the guidelines should make specific reference to considering the likelihood of the success of recovery measures and management's ability to deliver them in the time needed.

Finally, we caution against automatically linking ratings downgrades to early intervention triggers in the category of 'significant events' mainly for three reasons:

- A rating downgrade is expected to occur as a consequence of a significant event (i.e. any of the listed in the CP). Consequently, it would be redundant to include rating downgrades in the set of events competent authorities should identify to assess the prudential impact on the institution.
- External credit ratings methodologies are currently anchored to domestic sovereign credit ratings. Therefore, a deterioration on public finances of a sovereign will lead to a mechanical and systematic downgrade of financial institutions in that country independently of the domestic exposure of each bank. Therefore, the current wording of the CP will lead supervisors to assess the need of triggering early intervention measures for each domestic financial system every time a sovereign is downgraded.
- Including external ratings as an input in the early intervention framework goes against the FSB recommendations on reducing reliance on credit ratings in the regulation.

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?

The EBF has no particular remark to do about this question.