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Response to the November 2012 FSB consultation on Recovery and Resolution Planning

We welcome the FSB consultation. The paper gathers thoughtful though sometimes debatable observations and conclusions drawn by the authorities and the Industry from the RRP experience. Although mainly directed to supervision and resolution bodies, we believe some of the issues raised in the paper may benefit from reactions from the Industry.

To this end you will find our own comments on the three parts of the consultation below. We would also like to draw the attention of the FSB to two main issues:

Cooperation between authorities is not a given. We do not mean these authorities are not willing to cooperate. It may just happen that such an attitude would simply come into conflict with their mission statement or national legislation. If an international treaty is really out of reach, stronger FSB commitment and recommendations are to be expressed to give a practical and enforceable meaning to this call for cooperation.

We agree that banks and authorities must be prepared to react swiftly and efficiently to unexpected and unwelcome event. However we strongly believe that the answer to this issue is to be found in the timely reaction capacity and appropriate knowledge of the banks financial and operational structure rather than the development of endless stress scenarios developments.

I-Guidance on Recovery Triggers and Stress Scenarios (Annex 1)

We fully share the need for a certain diversity of indicators of stress including qualitative ones. We do prefer the notion of indicator rather than of trigger that implies immediate reaction. There should not be any automatism attached to these warnings and we do concur with the FSB stance in that respect. Their use can only be circumstantial.

However we also believe that only the executive management under the oversight of the Board can and should draw conclusions in case these warnings reach individually or collectively worrisome levels. Clear governance is critical.

In line with the spirit of this cautious but formalized managerial approach, we would avoid associating the authorities too narrowly to the decision process. Indeed, they must be informed as soon as possible where the executive management has identified a true stressed situation but they should not be part of the decision making. They are clearly entitled to review effectiveness of the process.

The relevance of these warning signals should certainly be demonstrated. However the reference to regulatory enforcement of recovery actions sounds inappropriate as the executive management is still in charge, except in exceptional cases where the firm is actually virtually in resolution.

We do not believe in detailed, multi-dimensional scenarios. We would recommend avoiding spending a lot of resources to draft thousands of action plans that will never be actually implemented in the contemplated form. A few main global situations suffice to cover most of the possible causes of serious deterioration of a bank soundness. They are the one that are useful to verify what set of recovery options are to be considered. We would also like to underline that dealing with market wide stress is most of the time out of reach of firms. No institution can define how to survive alone in a fully collapsing market.

All in all we are quite sceptical on the usefulness and practicability of the scenario theory for G-SIFI recovery purpose. It is certainly intellectually appealing, particularly the concept of reverse stress testing, but we doubt seriously that it could be implemented without strong simplification. The future is never predictable and, when it is, there is generally no agreement to believe in it.

II-Guidance on Developing Resolution Strategies and Operational Resolution Plans (Annex 2)

We appreciate that the guidance, in its introduction, underlines that it is not prescriptive and that resolution authorities will need to adapt strategies and plans to fit individuals G-SIFIs. Our view is indeed that the chosen resolution strategy should take into account the business model of the bank and be as business model neutral as possible and be flexible enough to address any type of crisis.

Resolution authorities could be tempted to request an adaptation of the structure of a particular bank in order to have a clearer presumptive path for resolution. This approach should not prevail, the bank business model should be chosen by its management in order to be efficient and to address risk management issues rather than possible resolution. The proposed two types of resolution, SPE and MPE, should therefore be used only as guidelines to establish the resolution plan of a particular bank.

We are particularly concerned, however, with the conditions deemed necessary for the implementation of the various strategies, regarding intra-group arrangement. FSB guidelines should resist the temptation to address the concerns of host authorities by imposing on banks binding intra-group guarantees which could hamper recovery or resolution actions.

We consider that the information made public regarding the presumptive path of resolution should be as limited as possible. Constraining the Authorities capacity to adapt their action to circumstances is not an effective concept. Moreover the investor request for clarity has little ground. Their interests are not threatened, on the contrary, as the new process endeavors to be more effective than bankruptcy proceedings. The main elements of the resolution plan should however be presented and discussed with the financial institution.

Firm-specific cross border cooperation agreements (COAG's) objectives are to share information and to guide the activity of Crisis Management Groups in planning, coordinating and implementing resolutions. However, they could not address the difficulties resulting from the fragmented legal frameworks.

We have always been in favour of an international convention (treaty) which will impose similar laws in each country that would have signed this convention. The resulting laws could impose on a cross-border basis a centralised management of a resolution, bail-in, transfer of assets, possibility to impose the continuity of existing contracts to outside counterparties. In absence of such powerful international agreement, the FSB should, at least, elaborate the main components or attributes of these COAGs. For example, the actions conducted by national authority should never be detrimental to the global resolution outcome and resolution international cooperation in resolution should be part of the national supervisory mandate so that they have legal grounds not to simply optimize national interest.

Ideally, regulation currently in progress should give to resolution bodies powers similar to the one of receivers. More particularly, these bodies should have the capacity to force service providers to continue performing against payments and Financial Markets Infrastructure not to withdraw the membership of banks in resolution. This provision would clarify and help significantly the resolution operational plan, and would avoid the legal difficulties and unwelcome consequences of defining "operational" liabilities.

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III- Guidance on Identification of Critical Functions and Critical Shared Services (Annex 3)

We welcome the structured approach provided to identify critical functions and agree with the five broad categories of activities outlined in the appendix. We wonder, however, if the framework to analyse and define critical economic functions is not marginally too restrictive and if some activities of systemic importance conducted by G.SIFI might not be excluded. For example, our view is that the analysis of trading activities would require a more in depth analysis

We fully support the idea that critical functions should be determined on a firm-by firm basis. Therefore, the detailed elements provided in appendix, although extremely rich and accurate, should be considered only as guidelines to help assess the criticality of the various activities of a bank. We consider that identification of critical functions should result from a discussion between the financial institutions and the supervisory authority, as the supervisors, as well as central banks, have information regarding the market share and role of the financial institution in each segment of the financial market.

We strongly believe that information provided to supervisors and resolution authorities should clearly identify critical economic functions, i.e critical to the financial system, as well as the internal functions which are needed to run these critical economic functions, i.e without which, the critical economic function would collapse. Indeed, it would be impossible to draw a workable resolution plan without this information. We agree with the proposed taxonomy and found of particular interest the distinction between finance-related shared services and operational shared services.

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Finally, our view is that additional guidance from the FSB is needed in order to:

- Clarify many issues regarding CMG's, in particular their governance and composition
- Delineate the role and responsibilities of home authorities towards host authorities and the requirements that host authorities could impose on cross borders banking groups.
- Insure consistency in conducting resolvability assessments to guarantee an even playing filed to cross border banking groups