

Financial Stability Board's Consultative document on Guidance on Arrangements to Support Operational Continuity in Resolution

General messages:

- BBVA supports the objective of setting up a credible and effective resolution framework where operational continuity of critical shared services necessary to maintain a firm's critical functions in resolution is one of its crucial elements. As such, BBVA acknowledges the importance of the Consultative Document of the Financial Stability Board (FSB) of 3 November 2015, open for comments until 4 January 2016, on Guidance on Arrangements to Support Operational Continuity in Resolution.
- BBVA supports the EBF and IIF/GFMA answers to the Consultative Document. In addition, we would like to share the following observations.
- BBVA has exited the G-SIB list recently although resolution planning is required for it. BBVA welcomes the main principles of the FSB's Consultative Document as we are strongly committed to resolvability. Especially, we appreciate the flexibility when it comes to choosing between one or a combination of three models of provision of critical shared services. However, when selecting the best alternative, **a pragmatic balance between the wishes of the regulators and the need to maintain an economically viable business model should be taken into account.**
- Also, BBVA agrees with the statement that operational continuity should be viewed as a key part of the resolution planning and the resolvability assessment of a firm. In this assessment, the Resolution Authority should consider whether the institution already has experience on separating and selling subsidiaries or parts of its group while guaranteeing at the same time the continuity of critical shared services through several tools such as transitional service agreements. Additionally, it is worth noting that the arrangements to support operational continuity depend on the choice of the bank's resolution strategy. Nevertheless, the FSB should recommend that the approach taken by national regulators might be **strategy/business-model neutral**. Furthermore, evaluating operational continuity should be **part of the resolvability assessment** rather than an independent activity.
- The final document should allow for a **reasonable amount of time** in order to complete a comprehensive mapping of the critical shared services of an entity.
- BBVA acknowledges the importance of the contractual approach found throughout the document to ensure the continuity of critical shared services. However, a **statutory solution** should be considered by regulators, such as the one stated in article 71 of the Bank Recovery and Resolution Directive, which gives the right to the Resolution Authority to suspend the termination rights of the non-defaulting party in a contract when a firm enters into resolution. Amending contracts signed with external

service providers may prove to be a major challenge, hence the need for an alternative approach to the contractual solution.

- In order to achieve credible and effective operational continuity in cross-border resolutions the document should stress that **close regulatory coordination and a high level of regulatory harmonization are necessary**.
- The financial resilience of service providers is critical but, in order to avoid unnecessary duplications, this should be considered **in the context of the drawing up of the resolution plan** and when planning access to liquidity in resolution. Furthermore, the financial viability of the shared service company should be driven by the services it provides and sells **rather than by corporate contributions** from the parent firm and by a robust and audited transfer pricing policy.
- BBVA would welcome **guidance and advice** on how to plan for the retention of key employees during the restructuring phase of the resolution process.

Question 1: Do you agree that the three service delivery models set out in Section 3 of the draft guidance represent, singly or in combination, current industry practice? Do you have any comments on the analysis of each model from a perspective of resolvability under different resolution strategies?

- Yes we agree with the three proposed models and with the fact that firms have ample freedom to select the one(s) that better reflects their resolution strategies.
- The role of CMGs and cooperation between authorities in order to improve the feasibility of continuity of critical shared services in resolution and to recognize resolution actions of authorities from different jurisdictions is crucial and should be mentioned and specifically highlighted.

Question 2: Are the arrangements to support operational continuity set out in Section 4 comprehensive and likely to be effective? What additional arrangements, if any, should be considered for inclusion? Should any elements be modified for specific service delivery models?

- Financial resources of service providers should be covered by arms-length pricing. Furthermore, and as stated above, this should be part of the resolution planning.
- High level of uncertainty surrounds stage ii) of the resolution process (paragraph 4.2), that is the wind-down and/or restructuring period. Post-stabilization restructuring is not likely to be fully predictable. Accordingly, more flexibility should be allowed when planning the operational continuity of a firm.

Question 3: Are any of the arrangements particularly important in the context of either a Single Point of Entry ('SPE') or a Multiple Point of Entry ('MPE') resolution strategy, or are they strategy-neutral?

- We strongly support the principle of proportionality in order to maintain a level playing field between banks with different business models and resolution strategies. Operational continuity of critical shared services should be business strategy-neutral.

Question 4: Do you consider that any of the arrangements identified in Section 4 would be challenging to implement in the context of all or specific types of the service delivery models identified in Section 3?

- Provided that it is feasible, this can be managed through efficient contractual provisions, but a reasonable amount of time should be considered to amend the corresponding agreements.
- As mentioned earlier, a coordinated statutory approach should be analysed. Contractual provisions may be difficult to introduce/implement in some cases. For example, when a bank is at a disadvantage in terms of bargaining power with a specific service provider from an industry other than financial. This situation may occur when the provider offers its services to different industries which do not necessarily include the concerns of operational continuity, ultimately weakening the financial community influence to negotiate the introduction of such clauses in their contracts.
- In addition, a definition of industry standard clauses to be included in the context of operational continuity could be useful.

Question 5: Does the legal entity ownership structure for the provision of critical shared services (for example, wholly owned or partly owned through joint ventures) give rise to specific challenges in relation to operational continuity? If so, what are these challenges and how might they be mitigated?

Question 6: Are there measures, in addition to those suggested in Section 4 of the draft guidance that might reinforce contractual arrangements for the provision of shared services to support operational continuity in resolution? Do you foresee any challenges in adopting such measures in the context of all or specific types of service delivery model?

- For the critical services to continue during the restructuring period, specific clauses in the contracts between the financial entity and its suppliers are required. This provision becomes more important when the services are provided by external suppliers.
- However, there are three factors that affect the financial entity's capacity to include such clauses in the contract: (i) the local law of the company that supplies the services, (ii) the law which governs the agreement; (iii) the capacity to negotiate the terms of the contract with such supplier (in other words, the bank's negotiation power with, for instance, major technology providers).

Question 7: Are there any arrangements that might mitigate challenges in connection with (i) service providers from outside the jurisdiction of the resolution authority and (ii) non-regulated third party or intra-group service providers that should be covered in this guidance?

- This should be addressed during the resolvability assessment.

Question 8: Do you agree with the classes of information set out in the Annex as necessary to support firms and authorities in their assessment of operational continuity in resolution? Do you foresee any challenges for firms in producing and maintaining that information?

- We would welcome more detailed information. Among others, guidance on how to identify key personnel would be greatly appreciated.

Question 9: Are there any other actions that could be taken by firms or authorities to help ensure operational continuity in resolution?

- Regulation should be business strategy neutral and legislators should try to achieve a maximum degree of harmonization when implementing the FSB's guidelines into national law. More cooperation and coordination between authorities from different jurisdictions should be promoted.