

EBA/GL/2022/01

13 January 2022

Final Report

Guidelines

on improving resolvability for institutions and resolution
authorities under articles 15 and 16 BRRD (Resolvability Guidelines)

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1. Executive Summary

The resolvability assessment process is a key element of resolution planning in that it ensures that the resolution strategy can be effectively implemented.

As resolution authorities have made progress in deciding on resolution strategies and setting MREL¹, the focus is put on ensuring that banks become resolvable in line with their preferred resolution strategies and that impediments to resolution are removed.

These guidelines aim to implement existing international standards on resolvability and take stock of the best practices so far developed by EU resolution authorities on resolvability topics. In particular, this document sets out guidelines to improve resolvability in the areas of operational continuity in resolution, access to financial market infrastructures (FMIs), funding and liquidity in resolution, bail-in execution, business reorganisation and communication.

However, they do not cover all topics relevant to resolvability either because (i) those are covered elsewhere (e.g. the calibration and eligibility of loss absorbing capacity is extensively covered in Directive 2014/59/EU² or (ii) because those topics will likely be further specified in future EBA regulatory products (e.g. transferability). These guidelines could be complemented on a regular basis as progress is achieved on relevant policy topics – both at international and EU level.

While the bulk of the guidelines are addressed to institutions, some of them are also targeting authorities, as they need to assist institutions in improving resolvability. Typically, the execution of bail-in requires input from authorities for institutions to be able to improve their readiness.

These guidelines aim to be the policy point of reference for both authorities and institutions on resolvability-related topics in the EU. The aim is to ensure consistent progress on resolvability for all institutions and facilitate resolvability work for cross-border groups and its monitoring in resolution colleges.

These guidelines aim to set out the resolvability conditions for institutions or resolution groups for which the strategy involves the use of resolution powers as opposed to a liquidation procedure. And some of the conditions laid down in these guidelines may be resolution tool-specific (e.g. bail-in playbook) and the extent of their application to other resolution tools is left to the discretion of the resolution authority. Similarly, and to ensure proportionality, these guidelines are not automatically applicable for institutions, groups or resolution groups that benefit from the simplified obligation regime, for which the extent of their possible application is left to the discretion of the relevant resolution authorities.

¹ <https://eba.europa.eu/eba-shows-banks%E2%80%99-progress-planning-failure-encourages-them-issue-eligible-debt-instruments>

² Directive 2014/59/EU of the European Parliament and of the Council of 15 May 2014, establishing a framework for the recovery and resolution of credit institutions and investment firms and amending Council Directive 82/891/EEC, and Directives 2001/24/EC, 2002/47/EC, 2004/25/EC, 2005/56/EC, 2007/36/EC, 2011/35/EU, 2012/30/EU and 2013/36/EU, and Regulations (EU) No 1093/2010 and (EU) No 648/2012, of the European Parliament and of the Council (OJ L 173 12.6.2014, p. 190).

2. Background and rationale

1. Resolvability assessments support the strengthening of institutions, groups or resolution groups' resolvability preparedness by addressing ex ante any identified impediments to resolution in case they are found to be failing or likely to fail. The assessment of resolvability is an essential part of resolution planning.
2. Resolution authorities are responsible for resolution planning and eventually for the orderly resolution of institutions. As per Articles 15 and 16 of the bank recovery and resolution Directive 2014/59/EU³, resolution authorities are expected to assess an institution's or group's resolvability based on the following steps: (i) an assessment of the feasibility and credibility of the liquidation of the institution or group under normal insolvency proceedings; (ii) the selection of a preferred resolution strategy for assessment; (iii) the assessment of the feasibility and credibility of the chosen resolution strategy.
3. In line with the EBA objectives on the topic of resolution under Articles 8(ab) and 25(2) of Regulation (EU) No 1093/2010⁴ and the priorities set in the EBA 2020 Work Programme⁵, this document aims to specify steps that institutions, for which the preferred resolution strategy is not liquidation, should take to improve their resolvability.
4. These guidelines are based on existing international standards as set out by the Financial Stability Board⁶ and leverage the current practices in place in the European Union (EU), in particular within the Banking Union, following the specifications of the EBA regulatory technical standards (RTS) on the content of resolution plans and the assessment of resolvability⁷, included in the Commission delegated regulation (EU) 2016/1075⁸.
5. The Directive 2014/59/EU requires that the assessment of resolvability should take into account the matters specified in Articles 15(2), 16(2) of that Directive and in Section C of the Annex to the

³ Directive 2014/59/EU of the European Parliament and of the Council of 15 May 2014, establishing a framework for the recovery and resolution of credit institutions and investment firms and amending Council Directive 82/891/EEC, and Directives 2001/24/EC, 2002/47/EC, 2004/25/EC, 2005/56/EC, 2007/36/EC, 2011/35/EU, 2012/30/EU and 2013/36/EU, and Regulations (EU) No 1093/2010 and (EU) No 648/2012, of the European Parliament and of the Council (OJ L 173 12.6.2014, p. 190).

⁴ Regulation (EU) No 1093/2010 of the European Parliament and of the Council of 24 November 2010, establishing a European Supervisory Authority (European Banking Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/78/EC, (OJ L 331, 15.12.2010, p.12).

⁵ <https://eba.europa.eu/sites/default/documents/files/documents/10180/2970032/4c85f578-fe16-4cd7-920a-bbe0ac54b9eb/EBA%202020%20Work%20Programme.pdf>

⁶ [Guidance on arrangements to support operational continuity in resolution; Guidance on continuity of access to financial market infrastructures \(FMIs\) for a firm in resolution; Funding strategy elements of an implementable resolution plan; Principles on bail-in execution.](#)

⁷ EBA final draft regulatory technical standards on the content of resolution plans and the assessment of resolvability (EBA/RTS/2014/15).

⁸ Commission Delegated Regulation (EU) 2016/1075 of 23 March 2016, supplementing Directive 2014/59/EU of the European Parliament and of the Council with regard to regulatory technical standards specifying the content of recovery plans, resolution plans and group resolution plans, the minimum criteria that the competent authority is to assess as regards recovery plans and group recovery plans, the conditions for group financial support, the requirements for independent valuers, the contractual recognition of write-down and conversion powers, the procedures and contents of notification requirements and of notice of suspension and the operational functioning of the resolution colleges (OJ L 184 8.7.2016, p. 1).

Directive. The EBA RTS on the content of resolution plans and the assessment of resolvability⁹ specify that impediments should be identified at least in the following categories

- a. Structure and operations;
 - b. Financial resources;
 - c. Information;
 - d. Cross-border issues;
 - e. Legal issues.
6. These guidelines further specify this categorisation, adding resolution implementation categories, breaking down impediments as follows and providing a template for authorities to monitor progress.
- a. Structure and operations:
 - i. Operational continuity;
 - ii. Access to FMIs;
 - iii. Governance in resolution planning.
 - b. Financial resources:
 - iv. Loss absorbing capacity (MREL);
 - v. Funding and liquidity in resolution.
 - c. Information:
 - vi. Management information systems;
 - vii. Information systems for valuation.
 - d. Cross-border issues:
 - i. Cross-border recognition;
 - ii. Coordination.
 - e. Legal issues.
 - f. Resolution implementation;
 - i. Bail-in execution;

⁹ As reflected in Article 26(3) of Commission Delegated Regulation (EU) 2016/1075.

- ii. Restructuring;
- iii. Governance;
- iv. Communication.

g. Other institution-specific impediments (other than legal issues).

7. Please note that not all impediments are covered in these guidelines, as those are either sufficiently covered elsewhere in the regulatory framework or are planned to be covered in future updates of the guidelines; table 1 provides a mapping of which EU text or international standards covers which impediment and which impediments are specified in these guidelines.
8. These guidelines aim to complement the existing legal framework by implementing international standards recently made available and clarify what resolvability means for institutions as well as for authorities. The table below provides a legal mapping of how impediments are already identified in annex C of Directive 2014/59/EU and in the EBA RTS on the content of resolution plans and the assessment of resolvability¹⁰, what existing legal requirements already cover certain impediments (e.g. Article 45e, f and g of Directive 2014/59/EU for MREL), which impediments are covered in this version of the guidelines and which are not and to which international standards they correspond.

Table 1: Legal mapping

Impediments		Relevant FSB Guidelines	Directive 2014/59/EU Annex Section C	Other EU references	EBA Resolvability Guidelines
Structure and operations	<i>Operational continuity</i>	Guidance on arrangements to support operational continuity in resolution	Points (1) to (6), (10), (11), (16), (18), (19)	Art. 22(4) and 27 Commission Delegated Regulation 2016/1075	Section 4.1.1
				Commission Implementing Regulation 2018/1624	
				Section 4 EBA Guidelines on outsourcing arrangements (EBA/GL/2019/02)	
				Title VI EBA Guidelines on internal governance (EBA/GL/2021/05)	
				Section 3.7 EBA Guidelines on ICT and security risk	

¹⁰ Art. 22 of Commission Delegated Regulation (EU) 2016/1075.

management (EBA/GL/2019/04)					
	<i>Access to FMIs</i>	Guidance on continuity of access to financial market infrastructures (FMIs) for a firm in resolution	Point (7)	Art. 22(4)(c) Commission Delegated Regulation 2016/1075 Commission Implementing Regulation 2018/1624	Section 4.1.2
Financial resources	<i>Loss-absorbing capacity (MREL)</i>	TLAC Principles and Term Sheet Review of the technical implementation of the TLAC standard	Point (3), (13), (15) (17)	Art. 45e to 45g Directive 2014/59/EU; Art. 92a Regulation (EU) No 575/2013 ¹¹ Art. 28(1) and (2) Commission Delegated Regulation 2016/1075	Not covered in these guidelines
				Art. 45i BRRD; Draft ITS on disclosure and reporting of MREL and TLAC	
	<i>Funding and liquidity in resolution</i>	Guiding principles on the temporary funding needed to support the orderly resolution of a G-SIB Funding strategy elements of an implementable resolution plan	Points (3), (14) to (15)	Art. 22(5), 28(3) and 29(2) Commission Delegated Regulation 2016/1075	Section 4.2.1
Information systems	<i>Management information systems (MIS)</i>	Guidance on arrangements to support operational continuity in resolution	Points (8) to (12)	Art. 11 BRRD and Commission Implementing Regulation 2018/1624 Art. 22(3) and 29 Commission Delegated Regulation 2016/1075	Section 4.1.1

¹¹ Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms and amending Regulation (EU) No 648/2012 (OJ L 176, 27.6.2013, p. 1–337).

	<i>Information systems for valuation</i>	Guidance on arrangements to support operational continuity in resolution Principles on bail-in execution (Section on Valuation)	Point (9), (25)	Art. 29 Commission Delegated Regulation 2016/1075 Chapter 10 EBA Handbook on valuation for purposes of resolution	Section 4.3.1
	<i>Cross-border recognition</i>	Principles of cross-border effectiveness of resolution actions Section 5 of Funding strategy elements of an implementable resolution plan		Art. 55 and 71a Directive 2014/59/EU Art. 30, 43 and 44 Commission Delegated Regulation 2016/1075 Commission Delegated Regulation (EU) 2021/1340 Commission Delegated Regulation 2016/1712	
Cross-border issues			Point (20)	Commission Delegated Regulation (EU) 2021/1527, Commission Implementing Regulation (EU) 2021/1751	Section 4.4
	<i>Coordination</i>			Art. 13, 45h and 88 Directive 2014/59/EU; Chapter VI Delegated Regulation 2016/1075.	
Legal issues				Art. 31 Commission Delegated Regulation 2016/1075	Para. 17-20; 101-103;

	<i>Bail-in execution</i>	Principles on bail-in execution	Points (13) to (16), (21), (24) to (28)	Art. 37-41 Commission Delegated Regulation 2016/1075 EBA Handbook on valuation for purposes of resolution	Sections 4.5.1, 4.5.2
Resolution Implementation	<i>Business reorganisation and separability</i>		Points (6), (16), (18), (22) and (23)	Art. 25(3) and Commission Delegated Regulation 2016/1075; EBA guidelines on measures to reduce or remove impediments to resolvability (EBA/GL/2014/11); DR 2017/867, DR2016/1400	Sections 4.5.3, 4.5.4
	<i>Governance and communication</i>		-	Art. 22(6) Commission Delegated Regulation 2016/1075	Sections 4.5.5, 4.5.6
Other institution-specific impediments				Art 31. Commission Delegated Regulation 2016/1075 (other than legal issues)	Not covered in these guidelines

9. These guidelines aim to set out the resolvability conditions for institutions or resolution groups for which the strategy involves the use of resolution powers as opposed to a liquidation procedure. However, some of the conditions laid down in these guidelines may be resolution tool-specific (e.g. bail-in playbook) and the extent of their application to other resolution tools is left to the discretion of the resolution authorities. So as to ensure proportionality, these guidelines are not automatically applicable for institutions, groups or resolution groups that benefit from the simplified obligation regime, for which the extent of their possible application is left to the discretion of the relevant resolution authority.

10. These guidelines will be continuously updated and complemented as progress is made by authorities in developing their expectations for resolvability.

11. These guidelines aim to guarantee common practices by providing the common denominator for the preparation that institutions should make in order to improve their resolvability. An institution's compliance with these guidelines does not necessarily mean that the institution is resolvable, while the complying authorities, which have the sole responsibility of making the



resolvability assessment on the basis of their expert judgment, may require additional measures from institutions.

12. To ensure effective implementation and progress on resolvability, these guidelines set out a specific governance framework for resolution planning, in particular a board member should be designated as in charge of that.

Taking into account that the procedures to be established by institutions and authorities for the purposes of compliance with these guidelines are demanding, the date of application of these guidelines is set at 1 January 2024 to provide enough time for authorities and institutions to adapt their processes to the guidance included in these guidelines.



3. Draft guidelines



EBA/GL/2022/01

13 January 2022

Guidelines

on Improving Resolvability for Institutions and Resolution Authorities

1. Compliance and reporting obligations

Status of these guidelines

1. This document contains guidelines issued pursuant to Article 16 of Regulation (EU) No 1093/2010¹². In accordance with Article 16(3) of Regulation (EU) No 1093/2010, competent authorities and financial institutions must make every effort to comply with the guidelines.
2. Guidelines set out the EBA view of appropriate supervisory practices within the European System of Financial Supervision or of how Union law should be applied in a particular area. Competent authorities as defined in Article 4(2) of Regulation (EU) No 1093/2010 to whom guidelines apply should comply by incorporating them into their practices as appropriate (e.g. by amending their legal framework or their supervisory processes), including where guidelines are directed primarily at institutions.

Reporting requirements

3. According to Article 16(3) of Regulation (EU) No 1093/2010, competent authorities must notify the EBA as to whether they comply or intend to comply with these guidelines, or otherwise with reasons for non-compliance, by 08.06.2022. In the absence of any notification by this deadline, competent authorities will be considered by the EBA to be non-compliant. Notifications should be sent by submitting the form available on the EBA website with the reference 'EBA/GL/2022/01'. Notifications should be submitted by persons with appropriate authority to report compliance on behalf of their competent authorities. Any change in the status of compliance must also be reported to the EBA.
4. Notifications will be published on the EBA website, in line with Article 16(3).

¹² Regulation (EU) No 1093/2010 of the European Parliament and of the Council of 24 November 2010, establishing a European Supervisory Authority (European Banking Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/78/EC, (OJ L 331, 15.12.2010, p.12).

2. Subject matter, scope and definitions

Subject matter

5. These guidelines specify the resolution tool-specific actions that institutions, and resolution authorities should take to improve resolvability of institutions, groups and resolution groups in the context of the resolvability assessment performed by resolution authorities according to Articles 15 and 16 of Directive (EU) 2014/59¹³.

Scope of application

6. These guidelines do not apply to institutions which are subject to simplified obligations for resolution planning in accordance with Article 4 of Directive 2014/59/EU.
7. These guidelines do not apply to institutions whose resolution plan provides that they are to be wound up in an orderly manner in accordance with the applicable national law. In case of a change of strategy, in particular from liquidation to resolution, then the guidelines should apply in full as quickly as possible and no later than three years as from the date of the approval of the resolution plan including the new resolution strategy.
8. Resolution authorities may decide to apply these guidelines in whole or in part to institutions subject to simplified obligations for resolution planning or to institutions whose resolution plan provides that they are to be wound up in an orderly manner in accordance with the applicable national law. Resolution authorities may decide to apply resolution tool-specific parts of these guidelines (e.g. bail-in) to institutions whose planned resolution strategy does not rely on these tools.
9. For institutions that are not part of a group subject to consolidated supervision pursuant to Articles 111 and 112 of Directive 2013/36/EU¹⁴, these guidelines apply at the individual level.
10. For institutions that are part of a group subject to consolidated supervision pursuant to Articles 111 and 112 of Directive 2013/36/EU, these guidelines apply at the level both of the resolution entities and of its subsidiaries ('resolution group level').

Addressees

¹³ Directive of the European Parliament and of the Council of 15 May 2014, establishing a framework for the recovery and resolution of credit institutions and investment firms and amending Council Directive 82/891/EEC, and Directives 2001/24/EC, 2002/47/EC, 2004/25/EC, 2005/56/EC, 2007/36/EC, 2011/35/EU, 2012/30/EU and 2013/36/EU, and Regulations (EU) No 1093/2010 and (EU) No 648/2012, of the European Parliament and of the Council (OJ L 173 12.6.2014, p. 190).

¹⁴ Directive 2013/36/EU of the European Parliament and of the Council, of 26 June 2013, on access to the activity of credit institutions and the prudential supervision of credit institutions, amending Directive 2002/87/EC and repealing Directives 2006/48/EC and 2006/49/EC (OJ L 176 27.6.2013, p. 338).



11. These guidelines are addressed to financial institutions as defined in Article 4 (1) of Regulation (EU) No 1093/2010 that are institutions subject to resolvability assessment in accordance with Articles 15 and 16 of Directive (EU) 2014/59 and to competent authorities as defined in points (i), (v) and (viii) of Article 4 (2) of Regulation (EU) No 1093/2010 that supervise these institutions within the meaning of Article 2 (5), second subparagraph, of that Regulation.

Definitions

12. Unless otherwise specified, terms used and defined in Directive 2014/59/EU have the same meaning in the guidelines.

3. Implementation

Date of application

13. These guidelines apply from **1 January 2024**.

4. Guidelines on Improving Resolvability

4.1 Minimum requirements relating to structure and operations as per Article 27 Commission Delegated Regulation (EU) 2016/1075

4.1.1 Operational continuity

13. Institutions should have operational arrangements to ensure the continuity of services supporting critical functions (designated as 'critical services') and core business lines needed for the effective execution of the resolution strategy and any consequent restructuring (designated as 'essential services') – together with the critical services, 'relevant services' – and access to the operational assets and staff that are necessary upon entry into resolution and to facilitate business reorganisation.
14. Considering the different consecutive stages of the resolvability assessment in accordance with Article 23 of Commission Delegated Regulation (EU) 2016/1075, when setting out the resolution strategy, the resolution authority should firstly take into account the structure,



business model and the different service models used by a given institution or group and how they interact. As a next step, and without prejudice to their independence in choosing the service delivery model¹⁵ which best suits their business, institutions should demonstrate, in line with the already identified resolution strategy, that their service delivery model does in fact support the resolution strategy.

Mapping of core business lines and critical functions

15. Institutions should identify relevant services, operational assets and staff and map them to critical functions, core business lines and legal entities (providing and receiving the services). The mapping exercise should include at least the information requested in accordance with Commission Implementing Regulation (EU) 2018/1624¹⁶.

16. The mapping referred to above should be embedded in regular business processes, be comprehensive and regularly updated.

Contractual provisions

17. Institutions should ensure that the terms of service level agreements (SLAs) on service provision and pricing do not alter solely as a result of the entry into resolution of a party to the contract (or affiliate of a party). This entails that the risks related with third-party contracts governed by third-country laws should also be taken into account to ensure they do not impede institutions' resolvability. More specifically, institutions should ensure that as long as substantive obligations continue to be met, relevant contracts for services provided by intra-group and third-party providers ensure:

- a. no termination, suspension or modification on the grounds of resolution (incl. business reorganisation under Article 51 of Directive 2014/59/EU);
- b. the transferability of the service provision to a new recipient either by the service recipient or the resolution authority because of resolution (incl. reorganisation under Article 51 of Directive 2014/59/EU);
- c. the support in transfer or termination occurring during resolution (incl. reorganisation under Article 51 of Directive 2014/59/EU) for a reasonable period (such as 24 months) by the current service provider and under the same terms and conditions; and

¹⁵ Such as: (i) provision of services by a division within a regulated legal entity; (ii) provision of services by an intra-group service company; or (iii) provision of services by a third-party service provider.

¹⁶ Commission Implementing Regulation (EU) 2018/1624 of 23 October 2018 laying down implementing technical standards with regard to procedures and standard forms and templates for the provision of information for the purposes of resolution plans for credit institutions and investment firms pursuant to Directive 2014/59/EU of the European Parliament and of the Council, and repealing Commission Implementing Regulation (EU) 2016/1066 (OJ L 277, 7.11.2018, p. 1).



- d. the continued service provision to a divested group entity during resolution (incl. reorganisation under Article 51 of Directive 2014/59/EU), for a reasonable period of time following divestment – such as 24 months.

18. Institutions should ensure that relevant services can continue during the implementation of the resolution strategy, including the business reorganisation plan.

19. Where, despite their best efforts, institutions are unable to achieve 'resolution resilience' by way of contract terms ensuring the conditions listed in paragraph 17, they should provide the relevant resolution authority with sufficient justification as to why the contracts could not be amended and advance potential alternative strategies, such as moving to providers that will allow for the inclusion of resolution-resilient terms.

20. In case the institution is not able to put in place credible alternative measures, for third-country outsourced contracts, the institution should pre-fund the contracts for a period adequate to the resolution strategy and for no less than six months, the liquidity should be ring-fenced and made of high-quality assets.

Management information systems (MIS) in the context of operational continuity

21. Institutions should be able to report to resolution authorities on their provision or receipt of relevant services, with information that is up-to-date and available at all times. To this end, institutions should have comprehensive, searchable and up-to-date MIS and databases (all together, referred as 'service catalogue') containing the necessary information for the successful implementation of the tools envisaged in the resolution scheme, including information on ownership of assets and infrastructure, pricing, contractual rights and agreements, as well as outsourcing arrangements.

22. Institutions should document the relevant contractual arrangements for relevant services received from both third-party and intra-group entities¹⁷ and have clear parameters against which the performance of the relevant service provision can be monitored based on the SLAs, ensuring that resolution authorities have access to all information necessary to take appropriate decisions and to apply resolution powers. This should include details of the relevant service providers and recipients, the nature of the service, its pricing structure (or an estimate of the cost for in-house services), clear parameters (qualitative/quantitative), performance target (or equivalent for in-house services), any onward provision to other entities or sub-contracting to third-party providers, associated licences and substantive obligations under the contract (such as payment/delivery). When the counterparty is located outside the EU, the bank should consider this circumstance when assessing the risks to operational continuity in resolution. In particular, in this case the bank should assess to what extent the law of an EU Member State effectively applies to the contract. Where recourse is made to relevant intra-entity services, the documentation should facilitate the identification

¹⁷ Relevant services received from intra-group entities encompass: i) those provided by units/divisions within the same group legal entity (intra-entity), ii) those provided by another group legal entity.



of services and drawing up of transitional service agreements, should this be required under the chosen resolution strategy.

23. The service catalogue should provide granular information in relation to:

- a. the institution's service mapping as described in paragraph 15 and 16, including the description of the nature of the services;
- b. relevant services, as a result of the analysis of (i) the materiality of the impact of interruption to the services, and (ii) their substitutability;
- c. the costs or price (when more relevant) associated with the provision of the services (see also paragraph 31 and 32);
- d. the linkage to the contractual arrangements governing the relevant services and supporting resources (such as operational assets). Where several contracts fall under a master agreement, which covers the information required under paragraph 23, institutions may include in the service catalogue and contract repository only the master contract, provided that they can identify all contracts that are made under each master contract and that the relevant resolution authorities do not object.

24. The service catalogue should be searchable – the information should be easily retrieved according to criteria relevant for resolution purposes – and be able to produce detailed reports on the different dimensions.

25. Institutions should have a comprehensive and searchable repository of contracts servicing all relevant services – both in and out-sourced. The repository should be updated on a regular basis and accessible on a timely basis.¹⁸

26. Institutions should demonstrate these capabilities as part of dry runs to the resolution authority.

Financial resources for ensuring operational continuity

27. Institutions should monitor the financial resources available for intra-group providers of relevant services and for ensuring the payment of third-party service providers. Financial resources should be sufficient to facilitate operational continuity of critical functions and core business lines in resolution, covering both stabilisation and restructuring phases.

28. Institutions should ensure that relevant service providers are financially resilient in resolution. Where relevant services are provided by an unregulated intra-group entity, the service recipient should ensure that the provider has adequate liquid resources segregated from other group assets at least equivalent to 50% of annual fixed overheads, which should be computed

¹⁸ The specific fields to be provided in the contract repository are provided in annex 3.



in accordance with Article 1 of Commission Delegated Regulation (EU) 2015/488.¹⁹ Where relevant services are provided by an external entity, institutions should undertake adequate due diligence to assess the financial resilience of the third-party provider.²⁰

Pricing structure

29. Institutions should ensure that cost and pricing structures for relevant services should be predictable, transparent, and set at arm's length. Where relevant, clear links should be established between the original direct cost of the service and the allocated one. Hence, institutions should be able to explain how the costs of the relevant services have been allocated internally. This serves the purpose of providing ex ante certainty on the costs at which services will continue to be provided in resolution and facilitating decision-making during the restructuring phase.

30. Institutions should ensure that no alteration of the cost or pricing structure for services should occur solely as a result of the entry into resolution of the service recipient. This arrangement supports the financial viability of an intra-group service provider on a standalone basis or ensures that the documentation could form the basis for an external contract if an entity that is providing a critical service is restructured in resolution.

Contingency arrangements for key staff and know-how

31. Institutions should ensure that relevant services should be operationally resilient and have sufficient capacity, in terms of human resources and expertise, to support both resolution and post-resolution restructuring. Regarding third-party-relevant service providers, they should be subject to due diligence in accordance with Section 12.3 of EBA Guidelines on outsourcing²¹.

32. With regard to how internal relevant service providers (both intra-group and intra-entity) can comply with the previous paragraph, institutions should have documented plans in place to help ensure that relevant roles remain adequately staffed in resolution, including: retention plans detailing measures that can be taken in the run-up to and during resolution to mitigate potential resignation of staff in relevant roles; succession plans ensuring that alternative staff with adequate skills and knowledge are available to fill relevant roles potentially left vacant in resolution; and arrangements to address risks associated with staff carrying out functions in more than one group entity, if relevant.

Access to operational assets

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Commission Delegated Regulation (EU) 2015/488 of 4 September 2014 amending Delegated Regulation (EU) No 241/2014 as regards own funds requirements for firms based on fixed overheads (OJ L 78, 24.3.2015, p. 1).

²⁰ See, for instance, the approach delineated in Section 12.3 of EBA Guidelines on outsourcing arrangements (EBA/GL/2019/02).

²¹ EBA/GL/2019/02.



33. Institutions should ensure that access to operational assets by relevant shared service providers, serviced entities, business units and authorities would not be disrupted by the failure or resolution of any particular group entity.

34. To this end, institutions should have arrangements in place to ensure continued access to relevant operational assets in the event of resolution or reorganisation of any group legal entity by way of resolution-resilient leasing or licensing contracts. Where this cannot be adequately ensured, institutions may arrange for those assets to be owned or leased by the intra-group company or regulated entity providing the critical shared services. Otherwise, contractual provisions to ensure access rights could be considered.

Governance for operational continuity

35. Institutions should have adequate governance structures in place for managing and ensuring compliance with internal policies applicable to service level agreements. In particular, with regard to relevant services, independent of the fact that they are provided intra-group or by third parties, institutions should have clearly defined reporting lines to timely monitor their compliance with SLAs and should be able to react appropriately.

36. Institutions should ensure that business continuity planning and contingency arrangements for relevant service providers take into account resolution-related conditions and are appropriate to ensure that services continue to be provided in resolution, without needing to rely on staff from business lines that may no longer be part of the same institution/group as a result of resolution.

37. Institutions should have in place a swift and efficient decision-making process commanding elements that can impact operational continuity, including, but not limited to, the following elements:

- a. Activation of business continuity plans and/or contingency arrangements in resolution and during any ensuing re-organisation;
- b. Allocation of access rights to back-up staff and to a potential special manager under Article 35 of Directive 2014/59/EU;
- c. Relevant service providers' access to potential pre-funding;
- d. Communication of operational continuity elements to the authority and within the group to support any restructuring and the experts drawing up the business reorganisation plan.

4.1.2 Access to financial market infrastructures (FMIs)



38. Institutions should have arrangements in place to ensure continued access to clearing, payment, settlement, custody and other services provided by FMIs²² and FMI intermediaries²³ in order to avoid disruptions ahead of and during resolution and help restore stability and market confidence after resolution.

Identification of FMI relationships

39. Institutions should identify all relationships they have with FMIs and FMI intermediaries. The key systems and personnel required to maintain access to FMI services should also be identified, and arrangements should be in place to ensure they remain available or can credibly be replaced in a crisis.

40. Institutions should have a clear understanding of the membership requirements of identified FMI service providers and the conditions for continued access to critical and essential FMI services leading up to and during resolution. To this end, they should identify the obligations they need to abide by under FMI rulebooks and contracts with FMI service providers, and verify if and which obligations would apply to a potential successor entity arising from resolution (bridge institution or acquirer). Analogously, they should identify the substantive obligations under their contracts with other service providers, whose services are necessary to use the services of FMIs.

41. Institutions should know how to communicate with each FMI service provider at a time of financial stress and ensure that they are able to provide any additional information that may be required for access to be facilitated.

42. Institutions should consider the actions, such as increased margin requirements or reductions in outstanding credit lines, that FMIs and FMI intermediaries would be likely to take, as well as in which circumstances and within which timeline (such as intraday or within a few days) these might be taken, and to what extent. Additionally, institutions should identify requirements to contribute additional amounts to default or guarantee funds, to secure additional liquidity commitments, or to pre-fund part or all of payment and settlement obligations in the event of financial stress and in resolution. A reasonable estimate of the liquidity requirements they might face under different stress scenarios should be provided to the resolution authority, together with relevant granular data on credit lines and their usage and the historical peak of (intraday) liquidity or collateral usage over a given time horizon.

43. Institutions should assess the impact of the likely actions identified (increased requirements, degraded, suspended or terminated access to the FMI) on critical functions and core business lines.

²² Financial Market Infrastructures, or 'FMIs' are to be understood in accordance with CPMI-IOSCO's definition and include therefore as a minimum: payment systems, (international) central securities depositories, securities settlement systems, central counterparties, trade repositories. (<https://www.bis.org/cpmi/publ/d101a.pdf>)

²³ In line with BRRD Annex Section C (7).



Mapping and assessment of FMI relationships

44. Institutions should map the relationships with FMI service providers²⁴ to: (a) critical functions; (b) relevant services; (c) core business lines; (d) legal entities; and (e) supervisory, resolution or any other competent authorities for the FMI service provider, at least in line with Commission Implementing Regulation (EU) 2018/1624.
45. Institutions should assess the credibility of arrangements with alternative providers, if the potential interruption of the contractual relationship with relevant FMI service providers could materially impede the execution of the preferred resolution strategy. When alternative arrangements are not viable, institutions should consider alternative measures to mitigate the risk of disruption of access continuity.
46. Institutions should maintain an inventory of the actions that providers of critical FMI services may take to terminate, suspend or limit access, or any other actions that could negatively impact the FMI service access by the institution, should its membership requirements not be met, and their consequences for the institution.

Usage of FMIs and FMI intermediaries

47. Institutions should record transaction data on their relevant positions at and usage of relevant FMI service providers to be provided to the relevant resolution authority in the run-up to resolution and be able to provide more detailed data and information to the resolution authority upon request. Those records should be reviewed and updated whenever volumes processed by or positions held with FMI service providers materially change.

Contingency planning

48. Institutions should draw up and update a contingency plan describing how they will maintain access to relevant FMI service providers in stress situations, in the run-up to, during and after resolution.
49. Institutions should ensure that the contingency plans include a full range of plausible actions that each relevant FMI service provider could take ahead of and during resolution, and the institutions' potential mitigating actions. They should also detail any anticipated collateral, liquidity, or information requirements and how the institution would expect to meet them.
50. More specifically, institutions should ensure that contingency plans outline, among others:
 - a. the actions that FMI service providers would be expected to take in the lead-up to and during resolution;

²⁴ FMI service providers are considered alternatively critical when they are deemed necessary for the provision of a critical function and are essential when necessary for the performance of a core business line. Critical and essential FMI service providers are relevant FMI service providers.



- b. the infrastructure, processes and operational arrangements that the institution has put in place to ensure that the substantive obligations included in FMI contracts and rulebooks continue to be met, in order to maintain access to relevant FMI services;
- c. the actions the institution would undertake to mitigate threats to the performance of its critical functions and core business lines related to discontinued or degraded access, such as active management of exposures, pre-funding of obligations or credible ex ante alternative arrangements, and the likely outcome of those actions (effect on critical functions, core business lines and clients);
- d. the methodology underpinning the estimation of liquidity requirements under stress, including any assumptions related to the expected volume of business activity;
- e. the communication strategy.

Customer portability

51. Institutions should identify requirements for customer portability and provide the related information as regards CCPs, per CCP and per segment in which they act as clearing member, in line with the relevant FMIs' processes and procedures. This encompasses information on the segregation regime and type of client accounts, and the number of clients under different account structures.
52. Institutions' resources and systems should be able to maintain up-to-date information which could be provided rapidly in resolution to ensure the smooth transfer of client positions at CCPs as well as client assets in central securities depositories (CSDs). Such information should encompass a list of:
- a. clients for each omnibus account and the positions, margins and assets received as collateral per individual client within the omnibus account;
 - b. client positions, margins and assets received as collateral per individual client; and
 - c. individual client assets held at the CSD.

Information exchange and communication between authorities

53. Resolution authorities of FMI service users should seek to identify the relevant authorities of each provider of relevant FMI services and engage with them to discuss the impact of resolution on FMIs within their remit.
54. Resolution authorities should seek to have (subject to applicable law on information sharing and confidentiality) appropriate information-sharing arrangements in place that encompass



also early risk warnings, between resolution and supervisory authorities of FMI service users and the relevant authorities of providers of relevant FMI services.

4.1.3 Governance in resolution planning

55. The management body of the institutions should ensure an institution's compliance with these guidelines for the purposes of resolution planning, while an executive director within the meaning of Article 91 of Directive 2013/36 should be designated as in charge of resolution planning of the institution.

56. The executive director referred to in the previous paragraph should be, at a minimum, in charge of the following:

- a. ensuring the accurate and timely provision of the information necessary to prepare the institution's resolution plan;
- b. ensuring that the institution is and remains in compliance with resolution planning requirements;
- c. ensuring that resolution planning is integrated into the institution's overall governance processes;
- d. amending existing committees or establishing new committees to support resolution activities, where needed;
- e. signing off on the main deliverables and ensuring adequate delegation arrangements in this respect, as part of appropriate internal control and assurance mechanisms (such as the resolution reporting templates);
- f. updating on a regular basis the other members of the management body and of the supervisory body on the state of resolution planning activities and the resolvability of the institution, which is documented by means of minutes;
- g. ensuring adequate budgeting of and staffing for resolution activities. In particular in, but not limited to, the case of an entity of a group headquartered in a third country: this executive director ensures employment of staff knowledgeable of local circumstances and dedicated resolution planning staff that is actively involved in and contributes to the overall group resolution planning activities, with the ability to provide effective support in a group resolution scenario; and
- h. identifying the senior-level executive appointed by the institutions according to paragraph 57.



57. Institutions should appoint an experienced senior-level executive who is responsible for implementing, managing and coordinating the (internal) resolution planning/resolvability work programme.

58. The experienced senior-level executive should:

- a. coordinate and manage resolution activities, including preparation of workshops, completion of questionnaires and other resolution authority requests;
- b. serve, with his/her team, as the main point of contact for the resolution authority(ies) to ensure a coordinated approach for resolution planning and as the main point of contact for the implementation of the resolution strategy across the group;
- c. ensure consistent and well organised communication with resolution authorities;
- d. coordinate the operationalisation of the resolution strategy (preparation and testing of the relevant steps for the implementation of the strategy in the context of resolution planning) and participate in dry runs to test and evaluate the operational readiness of the institution; and
- e. where necessary, establish dedicated work streams to address resolution topics.

59. The governance processes and arrangements should ensure that resolution planning is integrated into the overall management framework of institutions and support the preparation and implementation of the resolution strategy.

60. Institutions should:

- a. ensure that resolution activities are adequately staffed to ensure that decisions in the context of resolution before, during and after a resolution event can be made in a timely manner;
- b. establish clear lines of responsibility, including reporting lines and escalation procedures up to and including board members and approval processes, for both resolution planning and crisis management (such as the implementation of the resolution decision or communication with relevant stakeholder groups), all of which is documented in dedicated policies and procedure documents (incl. playbooks);
- c. ensure that strategic decisions take into account resolution-related interconnections impacting resolvability (such as M&A activities, legal entity restructuring, changes to the booking model, use of intra-group guarantees or changes to the IT environment);



- d. inform resolution authorities without undue delay on material changes planned to elements such as the business model, the structure, the operational set-up (including changes to the IT infrastructure) and the governance having an impact on resolution planning activities or the implementation of the preferred resolution strategy and resolvability;
- e. ensure an efficient flow of information on resolution matters between the management board, the responsible senior level executive and all other relevant staff, enabling them to perform their respective roles before, during and after the resolution event;
- f. ensure that intra-group providers of relevant services have their own governance structure and clearly defined reporting lines, do not rely excessively on senior staff employed by other group entities, have contingency arrangements to ensure that relevant services continue to be provided in resolution and that the provision of relevant services within the group is structured to avoid preferential treatment upon the failure or resolution of any group entity; and
- g. in the case of a group headquartered in a third country, ensure that the entity is well staffed and its management is well informed about the group resolution strategy, including the decision-making processes/procedures in a crisis, and is able to balance decision-making by the group headquartered in a third country in going-concern, by taking into account the resolvability of local entities.

61. Institutions should establish a quality assurance process to ensure the completeness and accuracy of information sent to resolution authorities for resolution planning purposes. Resolution-relevant information and plans established by the institution should also regularly be reviewed by internal audit.

62. Institutions should:

- a. have arrangements that ensure the completeness and accuracy of data;
- b. ensure that resolution-relevant information is regularly reviewed by internal audit (resolution planning activities are part of the annual audit plan);
- c. ensure that the audit committee monitors the effectiveness of the institution's internal quality control, and receive and take into account audit reports; and
- d. ensure that the audit committee or another body periodically reviews these arrangements.

4.2 Minimum requirements relating to financial resources as per Article 28 of Commission Delegated Regulation (EU) 2016/1075

4.2.1 Funding and liquidity in resolution

Liquidity analysis

63. Institutions should identify the entities and currencies that they consider material²⁵ on grounds of liquidity, and the potential locations of liquidity risk within the group. When identifying material entities, institutions should include any relevant legal entities as defined in Article 2(4) of the Commission Delegated Regulation 2016/1624, but also consider any critical role played in the provision of funding such as access to central bank facilities.
64. Institutions should demonstrate their ability to measure and report their liquidity position at short notice and have capabilities to perform liquidity analysis of current positions at the level of material entities and of the group for material currencies, as per paragraph 2 of Article 415 of the Regulation (EU) No 575/2013. They should also be able to confirm that the liquidity needs of each non-material entity, and the obligations arising in each non-material currency, do not represent a risk to the liquidity position of the institution in resolution.
65. Institutions should identify the liquidity drivers in the run-up to resolution and in resolution. In the identification of drivers, institutions should consider crises of different natures.
66. Institutions should ensure that the liquidity analysis, mentioned in paragraph 68 is updated as necessary at the level of material entities, and institutions should timely deliver such information to resolution authorities, with the end aim of describing possible liquidity sources to support resolution, as per Directive 2014/59/EU Annex Section B (20).
67. Institutions should report the metrics indicated in paragraph 68 at the level of the resolution group, for each material legal entity²⁶ and, where relevant, for specific branches within the resolution group, in aggregate, on an individual basis and by material currency. Moreover, institutions should detail the assumptions upon which they rely in forecasting the evolution of the liquidity value of the counterbalancing capacity.
68. Institutions should simulate cash flows, for on and off-balance sheet items, and the counterbalancing capacity under different resolution scenarios:
- a. for the resolution group, for each material legal entity and, when relevant, for specific branches within the perimeter of the resolution group on an individual basis;

²⁵ For these purposes, material currencies are considered to be those for which separate reports are required following paragraph 2 of Article 415 of the Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms and amending Regulation (EU) No 648/2012 (OJ L 176, 27.6.2013, p. 1).

²⁶ Identified in accordance with paragraph 66.

- b. at aggregated level in the reporting currency and at the level of each material currency, including all currencies relevant to institutions' participation in FMIs; and
- c. over more time periods, from overnight to a sufficient time horizon following resolution (for instance, six months).

69. When estimating the liquidity and funding needed for the implementation of the resolution strategy, as mentioned in paragraph 68, institutions should pay particular attention to:

- a. legal, regulatory and operational obstacles to liquidity transferability, especially intra-group;
- b. obligations related to payment, clearing and settlement activities, including changes in liquidity demand and sources needed to meet such obligations, as well as potential liquidity effects of adverse actions taken by FMIs or FMI intermediaries;
- c. counterparty and collateral requirements, including those stemming from CCP and FMI membership, such as increased initial or variation margin requirements for financial instruments during and after resolution;
- d. contractual suspension, termination and netting/set-off rights that counterparties may be entitled to exercise upon the institution's resolution;
- e. liquidity flows between the resolution group and group entities outside of the resolution group perimeter and whether those would need to be analysed at arm's length and assess their legal robustness in resolution;
- f. legal and operational obstacles to timely pledging of available collateral;
- g. minimum and 'peak' intraday liquidity needs, operating expenses and working capital needs; and
- h. available central bank liquidity facilities, and the related terms and conditions for access and repayment.

Mobilisation of assets and other private resources

70. Institutions should have the capacity to:

- a. identify all assets that could potentially qualify as collateral eligible to support funding in resolution;
- b. differentiate between encumbered and unencumbered assets, determining legal rights to both pledged and unpledged collateral;



- c. monitor available and unencumbered collateral at the level of the resolution group and of each material legal entity or branch within the perimeter of the resolution group on an individual basis, for each material currency; and
- d. report information on available collateral at a granular level (including on central bank eligibility, currency, type of assets, location, credit quality), even under rapidly changing conditions.

71. Institutions should operationalise the mobilisation of collateral, developing and documenting all necessary operational steps, including the time horizon and governance processes, also to mobilise collateral that may be located in subsidiaries and/or branches operating in different currencies. The mobilisation of available collateral should be assessed and its effectiveness and operational robustness should be regularly (at least annually) evaluated and tested, to encompass, for instance, the ability to sell, repo or borrow against certain assets. Institutions should pay particular attention to impediments to the movement of funds and legal impediments in foreign jurisdictions. With this aim, institutions should have the capability to calculate and report the amount of assets which are freely transferable across the group, also accounting for the need to satisfy local regulatory requirements and meet operational liquidity needs.

Access to ordinary central bank facilities

72. Institutions should consider their need and ability to monetise collateral with third parties, including any potential need or ability to request liquidity from ordinary central bank facilities.
73. Institutions should ensure that the conditions for access to ordinary central bank facilities by material legal entities of an institution in resolution are also considered, including minimum conditions to be satisfied, collateral requirements, duration, or other terms.
74. Institutions should be able to provide information on the amount, and location within the group, of assets which would be expected to qualify as collateral for central bank facilities, as per Article 29(2) Commission Delegated Regulation (EU) 2016/1075.

Cross-border cooperation

75. In the case of a cross-border group resolution, group-level resolution authorities and resolution authorities of subsidiaries should cooperate to support the consistent and effective implementation of group-wide and local resolution funding plans.

4.3 Minimum requirements relating to information systems as per Article 29 of Commission Delegated Regulation (EU) 2016/1075

4.3.1 Information systems testing



76. These guidelines introduce a number of conditions for institutions to be able to provide relevant information to resolution authorities in a timely manner. This is particularly the case for operational continuity and funding and liquidity in resolution. Institutions should organise dry runs to demonstrate that their capabilities mentioned in sections 4.1.1, 4.2.1 and 4.3.2. As the capacities are being built up, these dry runs should take place on a regular basis until the resolution authority is satisfied and decides to decrease the frequency.

4.3.2 Information systems for valuation

77. Institutions should have capabilities (including MIS and technological infrastructure) to support the timely provision of valuation data at a sufficient level of granularity to enable valuations to be performed within a suitable timeframe. Those capabilities are set out in the MIS chapter of the EBA valuation handbook²⁷.

4.4 Minimum requirements relating to cross-border issues as per Article 30 of Commission Delegated Regulation (EU) 2016/1075

4.4.1 Contractual recognition of bail-in and resolution stay powers

78. Institutions should be able to provide a list of contracts concluded under third country law. This list should identify the counterparty, the obligations for the institutions and whether the contract is being exempted from and or is impracticable²⁸ for contractual recognition or whether it has included the contractual recognition terms for bail-in and stay powers, in accordance with Articles 55 and 71a, respectively, of Directive 2014/59/EU.

79. When monitoring compliance by institutions with Article 71.7 of Directive 2014/59/EU, resolution authorities should consider the most appropriate means, considering the national legal background:

- a. Sending letters to concerned institutions;
- b. Publishing / distributing a circular memo to institutions;
- c. Publishing the expectation that the institutions need to comply with the requirement;
- d. Issuing administrative decisions / orders;
- e. Issuing new (local) regulations / acts.

²⁷ <https://www.eba.europa.eu/eba-highlights-importance-data-and-information-preparedness-perform-valuation-resolution>

²⁸ To the extent possible



80. Institutions should carry out self-assessments and declare if they are able to provide the required data in the proper format and timeline.

81. Resolution authorities should further check for compliance with the conditions referred to in paragraphs 78 and 80 using the following means as appropriate:

- a. Request that the data be delivered in a predetermined format at certain time intervals. This can be further examined with an ad-hoc request to test the capability of the institution to deliver the required data in a short period of time;
- b. Request that institutions carry out a gap analysis on the information collected and available in their systems versus the minimum sets of information provided in the Commission delegated regulation (EU) 2016/1712²⁹;
- c. Designate the institution's internal audit function to check compliance. Based on this audit review, a statement is forwarded to the resolution authority with the outcome of the review process;
- d. Organise dry run exercises.

Obligations of authorities in resolution colleges

82. So as to effectively monitor resolvability in colleges, resolution authorities should at each annual meeting provide an update on the progress made in each jurisdiction over the last resolution planning cycle, and provide a timeline implementing requirements set out in these guidelines. A template is provided in annex 2 of these guidelines to monitor progress.

4.5 Resolution implementation

83. Institutions, in coordination with resolution authorities, should describe all operational aspects of, and operational measures necessary to, the resolution strategy as set out in this section of these guidelines in playbooks (including responsibilities, escalation procedures, quality assurance and all relevant regulations) and regularly evaluate and test those aspects by means of dry runs. In said playbooks, institutions should also cover the appropriate scenarios and describe all relevant internal regulations.

84. Since operational aspects of the resolution strategy are mostly linked to the tool(s) to be used, and touch upon several expectations outlined in the following chapters, institutions should

²⁹ Commission Delegated Regulation (EU) 2016/1712 of 7 June 2016 supplementing Directive 2014/59/EU of the European Parliament and of the Council, establishing a framework for the recovery and resolution of credit institutions and investment firms with regard to regulatory technical standards specifying a minimum set of the information on financial contracts that should be contained in the detailed records and the circumstances in which the requirement should be imposed (OJ L 258, 24.9.2016, p. 1).

demonstrate testing and operationalisation capabilities as further described below in these guidelines.

4.5.1 Bail-in exchange mechanic

Development of the external aspects of the bail-in exchange mechanic

85. As the external execution of bail-in involves different parties in the industry, resolution authorities should engage with all relevant parties, and as a minimum with institutions, market infrastructures and other relevant authorities. Institutions and resolution authorities should cooperate to design a credible exchange mechanic.

86. Institutions, which should actively support the authorities concerned, should ensure that said exchange mechanic is operationally applicable to them. As such, they should lay down in a bail-in playbook a process implementing the bail-in exchange mechanic which is compliant with the applicable national regulatory framework and highlight how said process:

- a. addresses the discontinuation, cancellation or suspension from listing or trading of securities;
- b. addresses the risk of non-settled transactions³⁰;
- c. deals with listing or relisting, and admission to trading of new securities or other claims;
- d. enables the delivery of equity to bailed-in creditors;
- e. accounts for potential adjustment that may be required at a later stage once the full extent of the institution's losses is known, for instance, based on the outcome of the final valuation; and
- f. allows for potential residual unclaimed equity to be claimed beyond the initial exchange period. New shareholders or new owners of the equity may not be immediately identified and contacted during the early stage of the bail-in execution. Therefore, the bail-in exchange mechanic should enable them to claim their rights at a later stage.
- g. complies with their disclosure obligations under Regulation (EU) No 596/2014³¹.

87. For cross-border groups, the roles of home and host authorities in the bail-in exchange process should be determined ex ante through resolution colleges/crisis management groups.

³⁰ Resolution might occur while securities trades have taken place but were not yet settled.

³¹ Regulation (EU) No 596/2014 of the European Parliament and of the Council of 16 April 2014 on market abuse (market abuse regulation).

Development of the internal aspects of the bail-in exchange mechanic

88. Institutions should consider in a playbook all the internal aspects of the bail-in, the timeline, the internal processes ensuring the transfer of losses to the resolution entity, the individual steps for the write-down and conversion by type of instrument.
89. Institutions should lay down in a playbook how they will be able to communicate the necessary information for valuation purpose as per section 4.3.2 of these guidelines and for the bail-in order.
90. Institutions should demonstrate how they would be able to update their balance sheet on the basis of the provisional valuation at short notice such as over the resolution weekend.
91. When setting out the internal aspects of bail-in, institutions should at least consider the following aspects: legal impediments, accounting impediments, tax impact, instrument specific features, SPVs, hedges, accrued interest, liabilities held by the institution itself, and adjustments to assumptions.

4.5.2 Business reorganisation

92. After the decision on a resolution action is taken, necessary business reorganisation measures will likely need to be implemented in order to feasibly and comprehensively restore an institution's viability. These needs would encompass both business reorganisation needs aimed at restoring the viability of the entity as well as reorganising the service delivery model in case of transfer to an acquirer or bridge institution or separating part of the group for instance, in the case of multiple point of entry (MPE) strategy.

Capabilities underpinning the production of the business reorganisation plan

93. Institutions should have in place a governance process for the business reorganisation plan (BRP) in accordance with Article 52 of Directive 2014/59/EU and the Commission Delegated Regulation (EU) 2016/1400³² to be adopted where necessary. The governance process should ensure the appropriate involvement of all business areas, units and bodies of the institution.
94. Institutions should demonstrate that they have a clear understanding of the coordination arrangement concluded between the resolution and competent authorities as per Title III of the EBA Guidelines on business reorganisation plans under Directive 2014/59/EU³³.
95. Institutions should have in place a process of communication of the business reorganisation plan to the resolution and competent authorities, which will enable these authorities to swiftly assess its viability in accordance with Article 4 of Commission Delegated Regulation (EU)

³² Commission Delegated Regulation (EU) 2016/1400 of 10 May 2016 supplementing Directive 2014/59/EU of the European Parliament and of the Council with regard to regulatory technical standards specifying the minimum elements of a business reorganisation plan and the minimum contents of the reports on the progress in the implementation of the plan (OJ L 228, 23.8.2016, p. 1).

³³ EBA/GL/2015/21.



2016/1400. This process should specify the way in which comments and questions on the business reorganisation plan posed by competent and resolution authorities will be swiftly addressed by the institutions.

96. Institutions should be able to demonstrate how the BRP would be amended following assessment by the resolution and competent authorities.

Identification of and planning for potential business reorganisation options

97. Any element of a future business reorganisation plan that is anticipated, either as key to the execution of the resolution strategy, including any element on operational separation of parts of the group in case of an MPE or in case of use of the asset separation tool, or that is highly likely to occur (such as recovery options or solvent wind-down for complex portfolios), should be reflected in coordination with resolution authorities already in the resolution planning phase.

98. In particular, elements under Article 2(1)c, Article 2(2), as well as a high-level description of the potential sources of funding as listed in Article 3(1)b of Commission Delegated Regulation (EU) 2016/1400 should be considered in that respect.

Separability to support resolution and the business reorganisation

99. Where the resolution strategy or pre-identified business reorganisation options have been identified as per the previous section and provide for separating some parts of an institution or group, institutions should demonstrate their ability to do so rapidly. This will typically hold true for the effective implementation of multiple point of entry (MPE) and strategies that foresee the transfer of part(s) of the group.

100. Where relevant, institutions should have the capability to identify and separate portfolios of assets. They should be able to adequately pair those assets and liabilities and should pay particular attention to assets that cannot be separated from one another, also taking into account which classes of arrangements are protected during the partial transfer of assets, rights and liabilities of an institution under resolution, in line with Art. 76 Directive 2014/59/EU and the further specifications provided by Commission Delegated Regulation (EU) 2017/867³⁴.

101. For the purpose of demonstrating the separability of a resolution group in the context of an MPE strategy, institutions, in coordination with resolution authorities, should clearly set out what the target operating model is, and how it will be achieved in a reasonable timeframe. For instance, if the restructuring plan foresees the transfer of the delivery of relevant services from an entity of the resolved group to a third-party provider or to the separated entity, it should be clearly demonstrated how this will be achieved, and under what timeframe. The same

³⁴ Commission Delegated Regulation (EU) 2017/867 of 7 February 2017 on classes of arrangements to be protected in a partial property transfer under Article 76 of Directive 2014/59/EU of the European Parliament and of the Council (OJ L 131, 20.5.2017, p. 15).



applies in case of insourcing of relevant services at the level of the resolved entity in case of resolution.

Re-authorisation and approvals

102. Institutions, in coordination with resolution authorities, should identify the relevant supervisory and regulatory approvals and authorisations they would require to implement the resolution action and, to the extent possible, establish procedures in order to ensure the timely issuance of necessary approvals and authorisations.
103. In particular, (a) newly established financial companies should need to apply for authorisation to perform regulated activities; (b) prospective new managers and directors should need to obtain supervisory fit and proper approvals; (c) in the case of MPE strategies, the set-up of outsourcing arrangements with the former entities of the group may need to be approved and (d) the transfer of control to new shareholders may trigger a change of control requirements (such as regulatory approval of qualifying holdings).
104. For the purposes of such re-authorisation and approval, competent authorities and resolution authorities should establish clear procedures to enable the smooth interaction and coordination between them and with financial supervision authorities.
105. Resolution authorities, in coordination with the relevant competent authorities, should review the restructuring measures put forward by institutions. In the context of an MPE strategy, particular attention should be given to the viability of the operational arrangements to be in place post-resolution.

4.5.3 Governance in resolution execution

106. Institutions should have governance procedures in place to support timely decision-making in resolution for effective preparation and timely implementation of the resolution strategy by resolution authorities, also enabling the provision of relevant information and effective oversight.

Management and control of the institution during resolution

107. Resolution authorities should clarify in resolution plans (i) the responsibilities in the management of the institution and the powers and governance rights that may be exercised by the resolution authority, resolution administrator (special managers appointed under Article 35 of Directive 2014/59/EU), and the institution's management during the resolution period and any ensuing restructuring; and (ii) the control of the institution.
108. In the case of a transfer or a bridge institution, resolution authorities may need to establish agreements to direct key activities of the operating bridge institution.
109. Resolution authorities should consider communicating the framework for control and management during the bail-in period to the market at the time of resolution.

Removal and appointment of management

110. Resolution authorities should specify the scope for members of the management body and senior management to be removed and new management to be appointed depending on the circumstances of the institution's failure and any actions already taken by the institution or supervisory authorities in the recovery phase.
111. Resolution authorities should require institutions to have options and arrangements in place to maintain key staff of the institution (as identified by institutions) in resolution, including if necessary to facilitate the application of the resolution strategy.
112. Competent authorities, in cooperation with resolution authorities, should specify the criteria new management would be expected to meet, and what information, direction, authorisation, and documentation they may need.

Transfer of control to new owners and managers

113. Resolution authorities should develop a clear mechanism for (i) establishing the new ownership of the institution as a result of the bail-in exchange; and (ii) transitioning to a state where governance and control rights are exercised by the new owners.
114. Such mechanism should be publicly disclosed ex ante (as appropriate) and emphasised in communications at the time of resolution.

4.5.4 Communication

115. Clear communication of relevant information to creditors, market participants and other key stakeholders should promote certainty and predictability, thus limiting contagion and fostering confidence in the resolution action.

Communication strategy

116. Institutions, in cooperation with resolution authorities, should develop a comprehensive creditor and market communication strategy for the resolution period.
117. Institutions should have in place a communication strategy that includes, as appropriate, template documents, frequently asked questions and answers and other tools to be used at key stages of the resolution period.
118. Institutions should identify critical external and internal stakeholder groups, which need to be informed in the resolution process, including the stakeholder groups set out in Article 22 (6) Commission Delegated Regulation (EU) 2016/1075 as well as relevant providers of services or operational assets. A list of the critical external and internal stakeholders identified should be prepared and kept up-to-date, so as to make it ready to share with the resolution authority.



119. Institutions should draft a targeted communication strategy for the identified stakeholder groups anticipating confidentiality considerations.
120. For each identified stakeholder group, the communication plan should contain the key messages (and the level of detail of those messages) to be communicated to promote confidence in the institution throughout resolution. The key messages should be robust, consistent and easily understandable and include, among others:
- a. a general statement based on the level of communication that would likely be required according to the resolution actions which might be taken; and
 - b. information about the consequences of the resolution for the respective stakeholder group in order to promote certainty and predictability.
121. Institutions should determine when communication with the identified stakeholders is necessary and define a strategy and procedures to prevent potential leaks of information.
122. Institutions should identify the owner of the communication (unit/function responsible for defining the message) and, if different, the unit/function responsible for disseminating the message, together with effective communication channels and the infrastructure that will be needed and used to implement the communication strategy and disseminate relevant messages.
123. Institutions should identify any communications to market participants that they may be required to make under applicable national legal disclosure regimes.

Annex 1 – Resolution timeline

124. Different stages can be identified for the preparation and execution of the chosen resolution strategy, mainly exemplified as: (i) resolution planning (both by the resolution authority - drawing of the plan and resolvability assessment) and by the institution (resolvability improvement); (ii) preparation for resolution; (iii) ‘resolution weekend’; and (iv) closing of the resolution.
125. Resolution planning comprises an analysis of institutions’ legal, financial and operational structures, identifying critical functions and services, as well as an analysis of institutions’ capital and funding structures, with a view to designing feasible and credible resolution strategies. This exercise also includes an assessment of the extent to which institutions are prepared for the execution of the preferred resolution strategy by identifying impediments to their resolvability and, where necessary, devising plans to address such impediments.
126. In a preparatory phase for resolution, the relevant resolution authorities prepare for the adoption of resolution schemes, assisted by independent valuations informing them of whether the conditions for resolution and bail-in application are met, and which resolution tools should be finally implemented. The ability of institutions’ management information systems (MIS) to provide accurate and timely information is fundamental for the reliable and robust performance of those valuations.
127. The ‘resolution weekend’ is the phase (preferably taking place when markets are closed, as the name suggests) starting with the determination that an entity is failing or is likely to fail and encompassing all internal processes needed for the adoption of the resolution scheme by the relevant competent authority. In case an open bank bail-in is applied as a resolution tool, institutions have one month from the application of the bail-in tool to prepare a business reorganisation plan for the approval of the resolution authority. For an efficient and effective implementation of the resolution strategy and the accompanying business reorganisation plan, institutions need to anticipate, as much as possible, and have in place adequate governance arrangements, communication plans and MIS.
128. After the execution of resolution actions, resolution authorities should assess whether affected shareholders and creditors would have received better treatment had the institutions entered into normal insolvency proceedings instead. This assessment will be informed by another independent valuation, enabling the resolution authority to decide whether or not affected shareholders and creditors are entitled to any compensation.



Annex 2 – Resolvability assessment template (see separate document)

Annex 3: List of the minimum fields to be included in the repository of contracts

Essential fields

- 1) Identifier [see CIR Template Z 8.00, 0005]
- 2) Start date of the contract
- 3) End date of the contract
- 4) Next renewal date
- 5) Parties to the contract and contact details (name, registered address, country of registration, LEI or corporate registration number, parent company where applicable) [see CIR Template Z 8.00, 0020-0050]
- 6) Subcontractor (Y/N)
- 7) Part of the group [see CIR Template Z 8.00, 0060] (whether the service is provided from inside or outside of the group - Y/N)
- 8) Part of the resolution group (whether the service is provided from inside or outside of the resolution group - Y/N)
- 9) Group department responsible for dealing with the main operations covered by the contract (name and unique identifier)
- 10) Brief description of the service
- 11) Pricing structure is predictable, transparent and set on an arm's length basis (Y/N)
- 12) (Estimated) total annual budget cost for the service or price where more relevant
- 13) Degree of criticality (high, medium, to be assessed)
- 14) Critical function for which the service is relevant [see CIR Template Z 8.00, 0070-0080]



- 15) Core business lines for which the service is relevant
 - 16) Resolution group/s for which the service is relevant (name of resolution group)
 - 17) Name of alternative service provider
 - 18) Jurisdiction/s of the contract or dispute process, including agreed adjudication procedures, mediation, and arbitration or internal dispute resolution
 - 19) Governing law [see CIR 2018/1624 Template Z 8.00, 0110]
 - 20) Country(ies) in which the services are provided (if different from country of registration of the provider)
 - 21) Resolution-resilient contract (according to the resolution resilient features) (Y/N/Partially³³)
 - 22) Penalties for suspension, breach of contract or termination, delay with payments
 - 23) Trigger/s for early termination
 - 24) Termination notice period for the provider
 - 25) Duration of post-termination assistance (months)
- Additional fields
- 1) Relationships between contracts (e.g. cross-referencing between SLAs and master contracts)
 - 2) Conditions of payment (e.g. pre-payment/post-payment)
 - 3) Existence of automatic renewal clauses (Y/N)
 - 4) Quantitative performance targets for the provider (e.g. 10 licenses for XYZ)
 - 5) Qualitative performance targets
 - 6) Party(ies) allowed to terminate
 - 7) Estimated time for substitutability [see CIR 2018/1624 Template Z 8.00, 0090]

5. Accompanying documents

5.1 Draft cost-benefit analysis / impact assessment

A. Problem identification

Banks' resolvability has improved since the entry into force of Directive 2014/59/EU, as legislative and policy products were issued to remove impediments to resolvability. In particular, the Guidelines on measures to reduce or remove impediments to resolvability³⁵ provide further details on the measures to remove impediments specified in Article 17(5) of Directive 2014/59/EU. Simultaneously, the RTS on the content of resolution plans and the assessment of resolvability³⁶ were issued to fulfil the mandate of Article 15 of Directive 2014/59/EU.

The current guidelines implement the internationally issued standards by the Financial Stability Board on funding strategy elements, continuity of access to financial market infrastructures (FMI), operational continuity in resolution, bail-in execution, cross-border effectiveness and TLAC principles. These standards, jointly with current implemented practices within the EU, form the basis of these guidelines.

B. Policy objectives

The aim of the guidelines is the specification of the steps that both banks and resolution authorities should follow to improve **resolvability**. Moreover, the guidelines seek to strengthen the level playing field in the resolvability assessment of institutions made by resolution authorities and to increase certainty among institutions about their preparedness for such assessment. For **cross-border groups**, the harmonisation of practices will facilitate the monitoring of progress on resolvability in **resolution colleges**.

Currently, competent authorities and banks account for the applicable regulatory and policy background at both international and EU levels (e.g. FSB standards at international level and RTS on the assessment of resolvability at EU level). However, the guidelines go beyond the international standards issued by the FSB in some areas (e.g. operational continuity, access to FMIs, funding in resolution and bail-in execution, etc.). They leverage progress made so far by resolution authorities in the EU in specifying policies to improve resolvability. The guidelines add improvement to the level playing field among/for institutions across the EU by setting out a harmonised and consistent approach to resolvability.

³⁵ <https://eba.europa.eu/regulation-and-policy/recovery-and-resolution/guidelines-on-measures-to-reduce-or-remove-impediments-to-resolvability>

³⁶ <https://eba.europa.eu/regulation-and-policy/recovery-and-resolution/regulatory-technical-standards-on-resolution-planning>



Regarding groups, and in particular **cross-border groups**, the guidelines add improvements to the existing framework to ensure a harmonised approach to resolvability across the various jurisdictions where cross-border groups operate.

C. Baseline scenario

The baseline scenario across the EU would depend on the level of implementation of Directive 2014/59/EU by member states. Article 15 of Directive 2014/59/EU (before its amendment by Directive (EU) 2019/879) already envisaged the assessment of resolvability of institutions made by resolution authorities, requiring them to examine the matters specified in Section C of the Annex. It mandated the EBA to issue RTS to specify the matters and criteria for the assessment of resolvability of institutions or groups. Therefore, the EBA RTS on resolution planning specify the criteria for a categorised assessment of a resolution strategy, i.e.: (i) structure and operations, (ii) financial resources, (iii) information, (iv) cross-border issues, (v) legal issues. Moreover, in order to ensure the effective removal of impediments to resolvability, Article 17 of Directive 2014/59/EU grants competent authorities specific powers.

D. Options considered

The guidelines aim to harmonise the steps that resolution authorities and banks should follow to increase resolvability. As there are precedents of this work at FSB and EU level (mainly derived from the transposition of Directive 2014/59/EU), the consideration of technical options was mainly focused on the extent of **leveraging on previous work** and the **scope** of the guidelines.

Other policy options are aligned with previous policy products and thus are not tackled in this impact assessment.

Approach

Option 1: Update RTS on the content of resolution plans and the assessment of resolvability

The RTS apply to **all resolution strategies** and specify a **process approach to resolvability assessment**. The RTS are based on a **process approach** with the following phases: (i) assessment of feasibility and credibility of liquidation, (ii) selection of the preferred resolution strategy and variants, (iii) assessment of feasibility of the assessment and (iv) assessment of credibility of the selected strategy.

As the objective of the guidelines is mainly to facilitate the work of institutions in improving their resolvability by setting out what measures they should take themselves as opposed to further specifying how resolution authorities should assess resolvability, the option of updating the RTS would give less clarity.

Option 2: Develop separate guidelines based on international standards issued by the FSB and the specifications of the RTS

The RTS aimed to fulfil the mandate of BRRD, while the guidelines aim to gather in one document both practices at EU level, international standards and the specifications of the RTS. The development of a new set of guidelines gives room for **flexibility** to select the proper policy options to improve resolvability. For instance, regarding the scope (institutions subject to bail-in) or the proportionality elements introduced in the guidelines (i.e. discretion granted to competent authorities to assess the specific requirements to institutions that qualify for simplified obligations).

Option 2 is the preferred option.

Scope of application

Option 1: All banks within the scope of resolution

This approach would represent continuity of the applicable framework in the EU. The RTS on the content of resolution plans and assessment of resolvability envisaged a staged approach based on first assessing the feasibility of liquidation and, if not, identifying another resolution strategy. However, rules are not applied differently based on the type of strategy.

Option 2: Discretion for banks under simplified obligations

Beyond the fact that some of the requirements are specific to certain resolution tools and thus not applicable to some banks, the proposal is to ensure proportionality by not requiring the application of the guidelines in full but to leave discretion to resolution authorities to opt for the optimal level of application. This **scope** ensures the effectiveness of resolution of a significant coverage of the EU banking sector (in pp of assets) and introduces an element of **proportionality**, as smaller banks (subject to liquidation strategies) would be out of the scope of the guidelines.

Option 2 is the preferred option.

E. Cost-benefit analysis

The **impact** of implementing the guidelines, which will become applicable from 1 January 2024, depends on the level of transposition of and compliance with the requirements introduced by Directive 2014/59/EU with regard to the assessment of resolvability and the specific powers of resolution authorities to remove impediments to resolvability and, regarding institutions, to the level of preparedness to withstand the assessment of resolvability.

The expected **benefits** of the implementation of the guidelines are mainly related to an increased **credibility of the resolution process** and the end of 'too-big-to-fail' by ensuring sufficient loss-absorbing capacity instruments and by removing impediments to resolution. Moreover, compliance with the requirement of loss-absorbing capacity and the assessment of resolvability have been strengthened by the amendments introduced in Directive (EU) 2019/879.



For **firms**, the benefits are mainly related to the clarity and harmonised approach to improving resolvability which will facilitate their own resolution planning and ensure a level playing field for banks and Member States.

In relation to the **costs of implementing** the guidelines, it is variable across **firms**. This is due to proportionality introduced (i.e. discretionary actions to be tackled by competent authorities for resolution strategies subject to simplified obligations). For small and non-complex institutions that are subject to simplified obligations or for which the strategy does not plan for the use of the bail-in tool, fewer costs are expected (with regard to cross-border issues and the bail-in execution, which are not applicable to them).

The magnitude of the costs also depends on the already implemented capabilities. Institutions have already made progress in removing impediments to resolvability. For those that made the best use of the five-year timeframe since BRRD came into force, these guidelines will represent a lower additional cost, as some of the impediments included in this version of the guidelines are already addressed by firms. For this reason, implementation costs for **firms are expected to be low**.

For **resolution authorities**, costs are expected to be low, as most of the requirements applicable to institutions and/or resolution authorities are already being implemented.

In relation to **cross-border groups**, costs are expected to be manageable for **resolution colleges**, as those institutions tend to be the most advanced in the resolution planning process. In addition, EU-wide guidelines should facilitate the work of colleges in setting out a harmonised approach to removing impediments across jurisdictions of the resolution college members and avoiding contradictory practices.



5.2 Feedback on the public consultation

The EBA publicly consulted on the draft proposal contained in this paper.

The consultation period lasted for three months and ended on 17 June 2021. Six responses were received and published on the EBA website.

This paper presents a summary of the key points and other comments arising from the consultation, the analysis and discussion triggered by these comments and the actions taken to address them if deemed necessary.

In many cases, several industry bodies made similar comments or the same body repeated its comments in the response to different questions. In such cases, the comments, and EBA analysis are included in the section of this paper where EBA considers them most appropriate.

Changes to the draft guidelines (or 'RGL') have been incorporated as a result of the responses received during the public consultation.

Summary of key issues and the EBA's response

Overall, the industry welcomed the guidelines and agreed on the importance of tackling resolvability in a consistent fashion. The consultation consisted of seven questions covering the different sections of the guidelines and the feedback is summarised hereafter.

Scope of application of the guidelines

Most of the respondents support the proportionality as laid down in the guidelines. However, many of them regret that the guidelines do not leverage on article 1.1 last subparagraph of Directive 2014/59/EU to further enforce the proportionality principle, while others warn about the discretion left to authorities to apply said proportionality and advocate for resolution authorities to be transparent on how they apply said discretion.

The EBA takes note of the feedback and remains confident that the resolvability guidelines as drafted already address most of the concerns expressed by the industry. The guidelines are fully subject to article 1.1 Directive 2014/59/EU, and the proportionality principle is repeated at multiple times within the document. The guidelines, under article 16 Regulation (EU) No 1093/2010, strike a balance of expectations addressed to authorities and institutions in order to maximise the effect of the guidelines on resolvability within the EU. Yet, the responsibility for resolution planning and resolvability assessment remains with resolution authorities.

Operational continuity in resolution

Some respondents raise questions regarding service continuity expectations and in particular: (i) the relevance of contractual resilience for EU-ruled contracts or the distinction for contractual resilience between resolution and reorganisation phases; (ii) the extent to which service pre-funding dissuades contract renegotiation or, when applied to in-house services, encourages



outsourcing; (iii) the cost benefit ratio and overall burden entailed by IT requirements and data requested for service catalogues (e.g. cost of services) or for contract records (e.g. scope and granularity).

The resolvability guidelines expect institutions to have in place arrangements mitigating discontinuity of both intragroup services and outsourced services. Said arrangements might be of a different nature but are proportionate and equivalent in terms of burden. Institutions should assess the legal and financial risks and potential mitigation actions. Ultimately, both institutions and authorities should have all necessary information at hand to address any potential disruption risks in resolution and during reorganisation.

All the respondents raised the compatibility issue between the necessity for a resolution-dedicated member of the management body and company law that might support one-tier management body systems. The EBA concedes to amend section 4.1.3 accordingly.

Access to FMIs in case of resolution

Only few high-level comments were received regarding the section dealing with FMI access continuity. Respondents mainly commented the content of FMI contingency plans, the scope of FMIs to be considered within the FMI access continuity assessment and argued for a deeper involvement of authorities in order to tackle at horizontal level the contact with FMI service providers and their authorities.

The EBA views the content of the contingency plans and their scope in line with international standards and will consider further work on how to improve horizontal work by authorities.

Management information systems and information system testing

Most of the respondents express concerns about the balance between effort and added value with regard to dry runs and stress that dry runs are not meant to be routine exercises. It is ultimately for institutions and authorities to elaborate a plan to test the different arrangements and capabilities supporting resolvability.

Funding and liquidity in resolution

Many comments brought forward by respondents are about liquidity analysis scope (e.g. material legal entity/material currencies), components (e.g. indicators and factors) and assumptions (e.g. scenarios, group structure). The EBA is not amending the draft guidelines in this respect, as it is already clear that institutions should identify their liquidity drivers, whatever they may be, while addressing risks to the liquidity position of the institution or resolution group in resolution. The examples of drivers mentioned in the guidelines are not meant to be exhaustive and both institutions and authorities should pay attention to the specificities of each resolution groups.

Resolution implementation



Some respondents request more details with regard to the bail-in mechanics, the parties involved, the expected deliverables, the allocation of responsibilities and the definition of the terminology. The EBA insists that bail-in mechanics depend very much on the applicable local legal framework and on the picture of the banking sector in each relevant jurisdiction. Therefore, the guidelines cannot be very granular on this point.

The provisions on the disclosure of the bail-in mechanics by resolution authorities are instead deleted to undergo additional analysis. They may be specified in subsequent guidelines, expected to be published for consultation in the course 2022.

Several respondents express strong doubt about the provision of a BRP as mentioned in paragraph 92-104 and fear divergences in the application of the discretion left to authorities. The EBA reiterates that the proposal is not for institutions to deliver a BRP before it is required, but to seek to anticipate its delivery by (i) considering likely reorganisation options and (ii) set out to the relevant resolution authority how the BRP will be delivered.



Summary of responses to the consultation and the EBA's analysis

Comments	Summary of responses received	EBA analysis	Amendments to the proposals
Question 1: Do you have any comments on the scope of application of these guidelines?			
Proportionality – scope of application	Most of the respondents welcome the proportionality introduced in the scope of application of the RGL. Nonetheless, two respondents wish for more proportionality as enshrined in article 1.1 BRRD and believe that some paragraphs of the RGL bear disproportionate costs while failing to provide practical and useful guidance. They believe that resolvability should be ensured via the enforcement of the existing crisis management tools, good data quality management and a reasonable prioritisation of resolution work.	<p>The RGL fall under article 15 and 16 BRRD on resolvability assessment. As such, BRRD applies fully, as does article 1.1. The RGL follow also the resolvability requirements as per CDR 2016/1075.</p> <p>Yet, the RGL explicitly introduce proportionality with regard to the resolution strategy in its paragraph 7 and adequate language to reflect considerations to the size, risk and business of institutions. Ultimately, resolution authorities will be responsible for implementing the RGL in their policies and reflect the adequate proportionality. The resolution strategy is taken into account and the RGL focus mostly on bail-in strategies, while an addendum to the RGL will address transfer strategies.</p> <p>In terms of benefit-cost ratio, the RGL are based on existing international standards and are adjusted to the resolution planning processes as defined within the EU. The main purpose of the RGL is to implement international standards and EU best practices as mentioned in paragraphs 4 and 7 (section 3 - Background and rationale)</p>	No change.
Proportionality – scope of application	One respondent believes that resolvability is the outcome of a dialogue between authorities, institutions and potentially third parties, and the RGL should encourage such dialogue to update the	The RGL stress in multiple paragraphs the imperative of cooperation between institutions and authorities in line with EBA's position that resolvability should be bank-specific. This is why the RGL cannot be too granular and must leave discretion to resolution authorities to adjust their expectations to their jurisdiction, markets and individual banks.	No change.



Comments	Summary of responses received	EBA analysis	Amendments to the proposals
	<p>resolvability requirements in line with institutions' specificities.</p> <p>Yet, this respondent warns about the discretion left to authorities in line with the proportionality principle and advocates for resolution authorities to formulate their expectations in a clear and detailed manner and be transparent and specific on how they apply said discretion. Overall, the respondent thinks that the RGL should set limits within which authorities can impose stricter requirements, especially with regard to smaller institutions.</p>	<p>Nonetheless, the RGL fall under article 1.1 BRRD and the proportionality principle is repeated throughout the document and should guide the interpretation and implementation by authorities of their discretionary prerogatives. In any case, the RGL are under article 16 Regulation 1093/2010, and addressees must make every effort to comply with the guidelines or explain when they depart from them. The EBA will therefore monitor the implementation of the guidelines.</p>	
Addressees	<p>One respondent welcomes the fact that the RGL are addressed to both resolution authorities and competent authorities.</p> <p>However, three respondents regret that the RGL are not addressed only to resolution authorities. They believe that resolution authorities could then publish their own guidance addressed to institutions in order to avoid institutions referring to different sources and for authorities to stray too much from the expectations set by the EBA.</p> <p>One respondent fears that the RGL transfer to institutions tasks that fall to</p>	<p>The RGL are addressed to institutions, resolution authorities and competent authorities in line with article 4 Regulation (EU) No 1093/2010, as they all play a certain role in the resolvability of institutions.</p> <p>Yet, the responsibility for resolution planning and resolvability assessment remains with resolution authorities.</p>	No change.



Comments	Summary of responses received	EBA analysis	Amendments to the proposals
	authorities and should therefore be rephrased.		
Deadline	Most of respondents advocate a deadline extension. Institutions might find themselves overwhelmed while trying to comply with several requirements from different authorities at the same time.	The RGL are based on international standards and policies that have been applicable for several years. Therefore, there should be no need for a deadline extension.	No change.
Legal impediments to be considered within the resolvability assessment	One respondent remarks that the RGL, contrary to what is stated in Table 1, do cover the legal issues as per art. 31 CDR 2016/1075, notably in paragraphs 17-20 (Art. 31.2), 102-104 (art. 31.3), 105-108 (art. 31.1). Therefore the statement that potential resolution impediments according to Art. 31 of delegated Regulation 2016/1075 are not covered in the RGL should be removed. The respondent believes that, at the very least, the RGL should not leave discretion to resolution authorities regarding identification of 'other institution-specific impediments' that are nowhere further determined. This could entail unreasonable requests and expectations from authorities.	The RGL is based on CDR 2016/1075 and international standards. Therefore it should give a rather complete overview of resolvability. Yet, some impediments or resolvability requirements might relate to legal issues and it also overlaps with other categories of impediments under CDR 2016/1075. In any case, resolution authorities are responsible for the resolvability assessment and all the elements listed in section C in the annex of BRRD should be considered. Yet, it is not always possible to map the elements in section C to the impediment categories in article 26 CDR 2016/1075. The elements that cannot be mapped would fall in 'other institution-specific impediments' for resolution authorities to identify.	Table 1 to be corrected to include legal issues.



Comments	Summary of responses received	EBA analysis	Amendments to the proposals
Definition of resolution group level	One respondent requests clarification regarding the definition of the concept 'resolution group level' in paragraph 11 in order to better understand what its components are.	The RGL falls under BRRD and terminology should be consistent unless specified otherwise. 'Resolution group level' is defined in paragraph 11 as the resolution entities together with their subsidiaries, which is in line with the definition of 'resolution group' given by BRRD in article 2.1.(83.b).	No change.
Question 2: Do you have any comments about the proposed requirements to improve resolvability with regard to operational continuity in resolution?			
Application of operational continuity arrangements	One respondent further echoes the general concern about proportionality in the specific context of operational continuity and prefers for paragraphs 13 and 14 to be proportionate to the preferred resolution strategy in line with article 1.1 BRRD.	Proportionality as introduced in the previous paragraphs still holds true in the rest of the document. In addition, all paragraphs should be considered as long as they are relevant in a given situation. A reference to a business reorganisation phase (see paragraph 13) is not relevant if the resolution plan does not foresee any business reorganisation in the aftermath of the resolution weekend. Lastly, paragraph 14 underlines very well the proportionality principle.	No change.
Mapping	<p>In its paragraph 13, the RGL refer to a mapping of essential services, and three respondents regret the use by the RGL of a concept ('essential service') that is not defined in the regulation. Besides, the concept seems to have been used inconsistently across policies. These respondents fear that, without legal provisions, the EBA cannot expect institutions to comply.</p> <p>One respondent, however, welcomes the introduction of the concepts of 'critical services' and 'essential services' and</p>	The RGL fall under BRRD and the terminology is consistent unless specified otherwise. When the EBA's policies make use of additional terminology not already defined in the applicable legal framework, said policies give a definition. Paragraph 13 gives a definition of critical, essential and relevant services. The RGL make consistent use of this terminology throughout the document. Concepts defined within the RGL apply only within the RGL.	No change.



Comments	Summary of responses received	EBA analysis	Amendments to the proposals
	wishes to have it enshrined in Level 1 regulation.		
Mapping	One respondent would like paragraphs 15 and 16 to be amended in order to reflect the fact that critical functions might not be mapped to core business lines, as criteria supporting the identification of critical functions and core business lines are not necessarily the same.	Paragraphs 15 and 16 do not state that critical functions should necessarily be mapped to core business lines. Continuity of critical functions is to be ensured in order to avoid adverse effects on the economy. Continuity of core business lines is to be ensured to preserve franchise value and support the continuity of critical functions. Therefore the mapping exercise expected in paragraphs 15-16, which corresponds to the mapping exercise referred to in points 1 and 3 of section C in the Annex of BRRD, should identify the relevant services, operational assets and staff mapped to critical functions and/or core business lines.	No change.
Contractual provision	<p>Many respondents question the scope and applicability of paragraphs 17-19 of the RGL. Three respondents consider that paragraph 17 requesting the introduction of contractual resolution provisions should only apply to contracts ruled by third country law. One respondent considers that the wording is misleading and that it should not distinguish between EU and non-EU contracts.</p> <p>One respondent claims that the expectation is challenging as counterparties are reluctant to exclude termination rights.</p>	<p>Paragraph 17 requests institutions to ensure, by all means necessary, that the terms of SLAs and service pricing entail operational soundness and that operational continuity cannot be threatened by resolution measures. Neither paragraph 17 nor paragraph 18 explicitly request the introduction of resolution-resilient clauses in contracts ruled by EU law. However, institutions should assess the legal risk and apply the relevant mitigation action. A clause might be necessary if article 68 does not apply (e.g. in any ensuing restructuring phase, or for contracts ruled by non-EU law).</p> <p>The RGL, in paragraph 17, highlight the non-EU contracts to make clear that they are in scope, along with EU contract, of this paragraph.</p>	No change.



Comments	Summary of responses received	EBA analysis	Amendments to the proposals
Contractual provision	Regarding the possibility of ensuring contractual resilience in any restructuring phase leading to resolution, one respondent complains that the RGL go beyond the regulation and that service providers may not accept to be bound in case of a change of control of the client. However, another respondent considers that article 68 BRRD remains applicable in the context of any restructuring phase leading to resolution.	When the resolution strategy foresees the use of the bail-in tool, the viability of the institution post resolution is one of the conditions for the resolution strategy to be applied as per article 51 BRRD. Therefore impediments to the reorganisation of the institution post implementation of the tool can be considered as impediments to resolvability. Operational continuity during the reorganisation phase should therefore be assessed.	Paragraph 17 redrafted to clarify that business reorganisation is part of resolution in the case of the use of the bail-in tool.
Pre-funding	<p>The introduction by the RGL of a six-month pre-funding of third-country outsourced contracts for which no alternative measure can be applied (see paragraphs 20) is considered critically by the respondents. The main doubts brought forward are that:</p> <ul style="list-style-type: none"> - The possibility to pre-fund contracts might be counterproductive, as it will be an incentive for an institution's counterparties not to accept a change of contracts; - It might not be sufficient to save the business relationship, as pre-funding can still be subject to moratorium powers; - The timeline foreseen should not be restricted to six months, but left to the appreciation of the 	Paragraph 20 of the RGL sets pre-funding as a last-resort mitigation action in specific circumstances. Resolution authorities and institutions are encouraged to investigate alternative measures. Therefore this paragraph cannot be considered as a disincentive. Besides, pre-funding was already a solution considered by international standards (e.g. FSB). However, regarding the pre-funding six-month maturity, the RGL should promote a minimum standard, but should not prevent authorities or institutions applying stricter arrangements when justified and as long as they are aligned with the proportionality principle.	Amend paragraph 20 to define the pre-funding 6-month maturity as a minimum.



Comments	Summary of responses received	EBA analysis	Amendments to the proposals
	authorities and should depend on the resolution strategy.		
Pre-funding	<p>Pre-funding of internal services foreseen in paragraphs 27-28 and internal segregation of said pre-funding could, according to two respondents, lead institutions to outsource services (losing full control of its services) or make liquid resources unavailable for more important matters. One of them considers that the incentive for group entities not to pay intragroup service providers is very low (more so under an SPE strategy). A more targeted approach is suggested by:</p> <ul style="list-style-type: none"> - focusing only on critical service intragroup providers; - considering contractual arrangements or non-HQLA assets as more reasonable alternative to pre-funding; - maintaining pre-funding within the bank. <p>Discretion should be given to institutions to suggest alternative arrangements and explain why OCIR financial resources should not be held.</p>	<p>Paragraph 27 applies to both intra-group and outsourced services and aims at ensuring a sufficient amount of financial resources to support the service provision in the context of resolution. Paragraph 28 of the RGL is more granular and allows for better monitoring of the service provider's financial resources, which is easier when the service provider belongs to the same group. The objective is the same for both intra-group and outsourced service providers. Ultimately, outsourced services run by third country contracts could be pre-funded under paragraph 20. Therefore, mitigation actions for both intra-group and outsourced service providers are proportionate, so the service delivery model of the institution should not be influenced by the expectations laid down in the RGL. If anything, it is easier for institutions to demonstrate that they have arrangements adequate to ensure operational continuity in resolution for intra-group services³⁷.</p> <p>All the relevant services are within the scope, as the continuity of both critical functions and core business lines is at stake. However, the RGL mention in paragraph 28 'adequate liquid resources segregated from other group assets'. The type of resources and their degree of liquidity, or where they should be segregated, remain to be discussed between institutions and authorities.</p>	No change.

³⁷ Nonetheless, the FSB guidance on arrangements to support operational continuity in resolution states that outsourced services usually benefit from the most formalised contractual arrangements, easing transparency and clarity and are less influenceable by the management of the institution subject to resolution.



Comments	Summary of responses received	EBA analysis	Amendments to the proposals
MIS requirements	One respondent emphasises that requirements concerning IT systems should be stable over time, as it remains an important cost and burden for institutions.	EBA strives to set high-level standards while taking into consideration the balance cost/benefit.	No change.
MIS requirements	Several respondents stress that the relevance of resolution data should be assessed with due consideration to existing data requirements in the context of recovery planning or business continuity. And both paragraphs 21 and 22 seem to impose overly burdensome requirements to institutions with limited added value for in-house services, especially for large organisations and institutions not subject to transfers.	The RGL set only expectations regarding MIS that are supporting resolvability, regardless of whether these expectations are tackled in other policies for different purposes. The RGL do not impose on institutions the requirement to adjust MIS capabilities when they are already present. Regarding paragraphs 21 and 22, they echo points 18 to 21 of section B in the Annex of BRRD. The RGL are therefore supported by the applicable regulation.	No change.
MIS requirements	Some respondents request clarification regarding the expectations around the service catalogue and the documentation needed. One respondent requests that paragraph 23 should be rephrased to exclude costs of the provisions of services from service catalogue because service catalogues should be fully dedicated to service continuity.	Paragraph 23 aims to give institutions the capacity to analyse the criticality and substitutability of services (points a. and b.) and assess financial resilience, pricing structure and resources adequacy of services to meet expectations laid down in the paragraphs following paragraph 23 and at the very least in paragraphs 29 to 34. Service continuity does not necessarily mean continuity with the same service provider, and substitutability cannot be ignored as it might be the only alternative to ensure service continuity. Besides, depending on the resolution strategy, substitution might even be the preferred solution.	No change.



Comments	Summary of responses received	EBA analysis	Amendments to the proposals
		<p>Costs or the price of services are precious information for assessing the financial resilience and reliability of the pricing structure by linking direct cost of service and the internally allocated cost. Ultimately, the cost structure for services should not alter solely as a result of the entry into resolution of the service recipient, in line with FSB guidance on arrangements to support operational continuity in resolution (section 4).</p>	
MIS requirements	<p>One respondent believes that retention of expert staff should have a higher priority than having a service catalogue.</p>	<p>The RGL highlight the need for staff retention mechanisms in paragraph 32, and the service catalogue is meant to support staff retention by identifying key staff, financial resources needed (also as part of staff retention) or potential substitutes.</p>	No change.
MIS requirements	<p>Keeping a record of contracts might entail an unnecessary burden for many respondents. Two respondents suggest that paragraph 25, dealing with contract repository, should clarify that repository concerns contractual arrangements and not operational arrangements between organisational units.</p>	<p>Paragraph 25 of the RGL is based on existing international standards and is supported by points (4)(8)(19) of section C and point (19) of section B in annex of BRRD. The scope of the contract repository is indeed limited to contractual arrangements contrary to the service catalogue that deals with a wider array of documentation covering outsourced services, services provided by intra-group entities and intra-entity services (see paragraph 22).</p>	No change.
MIS requirements	<p>One respondent argues that paragraph 78 dealing with detailed records of contracts containing bail-in clauses should be restricted to financial contracts in line with Article 30 of the delegated regulation 2016/1075, and ultimately Article 71(7) of the BRRD. In addition, institutions would</p>	<p>Paragraph 78 of the RGL is fully supported by point 19 section B of annex to BRRD which does not make a distinction between financial and non-financial contracts.</p>	No change.



Comments	Summary of responses received	EBA analysis	Amendments to the proposals
	not be able to identify holders of bearer bonds.		
MIS requirements	Lastly, one respondent suggests, in order to avoid unnecessary and disproportionate efforts to map individual services to individual contracts, making a clearer distinction between master contracts and individual contracts and introducing a paragraph requiring the service catalogue to map services to the master contract where relevant, as long as they can identify all individual contracts falling under the master agreement.	The main point is to ensure that contractual arrangements can be reachable to serve operational continuity objectives. The distinction between master agreements and individual contracts does not seem relevant. Should master agreements contain all the relevant contractual information expected in the service catalogue, then they can be considered as the relevant documents and should be adequately available in the contract repository. Ultimately, the objective is to have all the relevant information available and the relevant contracts at hand. The guidelines, although compliant with proportionality, foresee that the need to ensure operational continuity should not be disregarded in order to avoid burdensome measures.	Provision to be introduced to allow: institutions to map to master agreements for as long as they can demonstrate their capabilities to identify the individual contracts; authorities to request individual mapping if deemed necessary
Pricing structure	Two respondents question the new requirement introduced by the RGL in comparison to SRB EfB and namely that institutions should be able to explain the internal allocation of relevant service costs. The purpose and meaning of this expectation should be explained.	Paragraph 29 of the RGL expects institutions to be able to allocate service costs internally in order to: <ul style="list-style-type: none"> - understand the connection between services and business lines; - assess how the structure or restructuring of the institution supports or threatens the viability of the service; - ensure that institutions are reasonably pricing internal services and that there is no disconnection between direct cost and internal cost. 	No change.



Comments	Summary of responses received	EBA analysis	Amendments to the proposals
Pricing structure	Two respondents fear that paragraph 30 might entail a conflict between the cost structure definition in going concern for tax reasons (on an arm-length basis) and in resolution.	Ultimately, to ensure resolvability, pricing should allow the service to be sustainable and no privileges should be granted so that calculations and estimates are not biased.	No change.
Leasing contract continuity	Two respondents find that paragraph 34 sets an unrealistic requirement. Besides, the relevance of paragraph 34 is questionable for leasing agreements under EU law as they are already resolution-resilient.	Paragraph 34 of the RGL is fully supported by point 3 of section C in the Annex to BRRD. Continuity arrangements for infrastructure needed for critical functions and core business lines should be in place.	No change.
SLA governance – paragraphs 35-36	Two respondents question the purpose and interest of having specific governance arrangements for internal service providers that could cause interference with day-to-day governance and existing reporting lines.	<p>Paragraph 35 sets the expectation to have adequate governance and in particular reporting lines to monitor compliance with SLAs. SLA governance is part of the general governance of the institution. Paragraph 35 only highlights that compliance with SLAs in particular and operational continuity arrangement should be included in the general governance. Therefore, there is no conflict with the business-as-usual governance and should not interfere with existing reporting lines.</p> <p>Paragraph 36 provides for contingency plans and BCPs to encompass situations that are not business-as-usual and should consider resources and staff accordingly. Paragraph 36 does not interfere with business-as-usual governance and reporting lines.</p>	No change.



Comments	Summary of responses received	EBA analysis	Amendments to the proposals
SLA governance – paragraphs 35-36	One respondent needs further clarification regarding the interplay that paragraph 36 makes between business continuity planning and operational continuity in resolution.	Paragraph 36 sets the expectation that business continuity and contingency plans should take into account resolution related conditions. Business continuity management should aim at ensuring operational continuity in the event of a severe business disruption, as per EBA/GL/2017/11 and BCBS ‘High Level Principles for Business Continuity’, and based on article 74 CRDV. Article 74 CRDV makes the connection between internal governance (including business continuity management), recovery and resolution. Paragraph 36 ensures that said connection feeds into resolvability and that business disruption encompasses resolution.	No change.
Operational continuity governance – paragraph 37	One respondent suggests defining the entire paragraph 37 as applying to resolution and post-resolution.	Resolution, as per article 2.1(1) BRRD, is the application of a resolution tool. Any ensuing reorganisation could therefore be regarded as post-resolution and, nonetheless, remain critical to the success of the resolution strategy. In any case, operational continuity should be ensured from resolution to the moment the institution returns to viability.	Amend paragraph 37.
Consideration about in-house/outsource d services	One respondent wonders how far there is a level playing field between service providers, as requirements applicable to in-house service providers do not apply to outsourced service providers. The same respondent wishes for more clarification as to whether the operational continuity requirements about in-house services apply within a resolution group	The RGL expect institutions to have in place arrangements mitigating discontinuity of both intragroup services and outsourced services. Said arrangements might be of a different nature, but are proportionate and equivalent in terms of burden. The expectations set by the RGL should not influence the service delivery model of the institution on their own. As per paragraph 11, the RGL apply at the level of resolution groups. As a consequence, services provided by a different resolution group should in theory be considered as outsourced services. Yet,	No change.



Comments	Summary of responses received	EBA analysis	Amendments to the proposals
	only or also to other resolution groups (in-house services outsourced to another resolution group) in the context of MPE.	possibilities for institutions to apply expectations should not be restricted when it is possible for them to comply with higher standards.	
Scenarios	Two respondents expect the RGL to address to resolution authorities the requirement to better clarify assumptions underlying the failure scenarios for which operational continuity should be ensured (particularly in the context of paragraph 14)	Article 10 BRRD requires resolution plans to address different scenarios with potentially different strategies. Therefore, resolvability and operational continuity should be assessed in the context of different scenarios. Resolution planning is very much the outcome of the dialogue between institutions and authorities. Therefore, it is for institutions and authorities to define how they want to proceed regarding scenarios.	No change.
Governance	<p>All the respondents strongly believe that section 4.1.3 of the RGL should be amended. The necessity for a resolution-dedicated member of the management body to sign off on all main deliverables is deemed excessive. Respondents insist that the management body should be relieved of this unnecessary burden and that a better approach would be to give resolution authorities discretionary powers to require board approval when data quality is an issue.</p> <p>Besides, this requirement does not consider the applicable company law that can set a joint responsibility of the management body (one-tier management body system) so individual responsibilities cannot be attributed to its members,</p>	The point is to have resolution and resolvability topics monitored by high-level managers and ensure that they engage their responsibility in improving resolvability. However, the RGL should be compliant with company law and applicable in all EU jurisdictions.	Section redrafted in line with EBA GL on Governance and Article 46(4) of Directive 2015/849/EU



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	<p>contrary to what paragraphs 56 and 61 lay down. Said paragraphs should therefore be amended to be compatible with the applicable company law and senior management should be targeted instead of the management body.</p>		
Governance	<p>In addition, one respondent advises that:</p> <ul style="list-style-type: none"> - paragraph 61.f dealing with governance of intra-group service providers applies only in the context of transfer strategies; - paragraph 62 dealing with quality assurance processes assumes that processes are already in place, although it should be borne in mind that they cannot cover all resolution matters as resolution authorities come up with short notice requests; - expectations relating to continuous compliance are not aligned with the annual update of resolution planning and expectations relating to experience of senior executive in resolution are not realistic since resolution is a fairly new topic. 	<p>Paragraph 61.f of the RGL aims to ensure that (relevant) services are sustainable in the context of resolution and their continuity cannot be sacrificed by contextual managerial decisions or disruption of management following resolution, regardless of the resolution tool considered.</p> <p>Paragraph 61 of the RGL deals with control and compliance processes. The RGL do not make any assumption on the presence or absence of such processes. The objective of resolvability assessment is to ensure that these processes are operational on a continuous basis.</p> <p>BRRD was published in 2014 and policies have grown in number ever since. The compliance deadline for the RGL is not set until 2024. Resolution should no longer be considered a new topic.</p>	No change.



Comments	Summary of responses received	EBA analysis	Amendments to the proposals
Governance	Another respondent asks for the concept of 'material change' introduced by paragraph 61.d to be defined, to ensure that there is no duplication with prudential/supervisory requirements.	Material change should be understood similarly as in article 10.6 BRRD.	No change.
Governance	One respondent wishes that the RGL would provide guidance about training for staff involved in the resolution process (beyond staff identified in paragraph 61).	The RGL request institutions to have in place arrangements ensuring, as much as possible, operational continuity, including (but not limited to) staff retention mechanisms. The arrangements listed in the RGL are not meant to be exhaustive and institutions should demonstrate to institutions how they meet resolvability expectations. Staff training can certainly be a relevant arrangement to be discussed between institutions and authorities.	No change.
Question 3: Do you have any comments on the proposed requirements to improve resolvability with regard to access to FMIs in case of resolution?			
Scope of FMI relationships	Two respondents would prefer to limit the scope of FMI relationships in paragraph 39 to critical FMIs.	Resolution plans aim at safeguarding critical functions and core business lines. To meet this aim, both critical and essential FMI access continuity should be ensured as much as possible.	No change.
FMI additional liquidity requirements	Two respondents request that paragraph 42 be amended to provide for cases where the FMI contractual framework does not provide for additional liquidity requirements.	Paragraph 42 of the RGL is requesting institutions to identify potential additional liquidity requirements and to estimate and report them to authorities. As such, the paragraph does not state that there should be requirements and that estimates cannot be zero.	No change.



Comments	Summary of responses received	EBA analysis	Amendments to the proposals
FMI contingency plans	Two respondents consider that the assessment of FMI substitution under paragraph 45 contradicts the need for institutions to analyse/ensure FMI access continuity. FMI contingency plan would become obsolete if institutions focus on FMI substitution.	It would be counterproductive for contingency plans to focus only on maintaining a given FMI relationship when said relationship does not only depend on the institution. FMI contingency plans should ensure FMI access continuity either by securing the direct membership to a given FMI or by finding a substitute (e.g. indirect access or equivalent FMI service). This is in line with international standards (e.g. FSB).	No change.
FMI intermediaries	<p>Two respondents find paragraph 48 unclear and need clarification as to what contingency planning in terms of timeline means and what the transaction data referred to in paragraph 47 is.</p> <p>To another respondent, paragraph 47 should be further explained to understand the compatibility of an annual FMI template submission and the need to notify resolution authorities of any significant changes in FMI intermediary usage.</p>	<p>Paragraph 47 requests institutions to record transaction data on their relevant positions and usage of FMI service providers. Recorded data can then be submitted to authorities via the annual data submission and contingency plan submission, as well as upon request. The contingency planning phase is the phase during which institutions prepare their contingency plans (similarly as resolution planning phase).</p> <p>Transaction data consists of all the relevant data in the context of transaction with FMIs (e.g.: collateral pledged, margin calls, gross payments sent and received) in line with FSB Guidance on Continuity of Access to Financial Market Infrastructures ('FMIs') for a Firm in Resolution.</p> <p>The annual FMI template submitted to authorities does not include all the data feeding into contingency plans. Although the FMI template should support contingency planning, institutions should record a wider range of data.</p>	Text amended to make reference to relevant FMIS and in the run-up to resolution.



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FMI service providers' authorities	Most of the respondents welcome the involvement of resolution authorities in paragraph 54 in the context of contact with FMI service providers' authorities. Yet, they insist on the added value of a horizontal approach at the level of authorities instead of individual level of the institutions.	<p>Paragraphs 53 and 54 are already addressed to resolution authorities. A horizontal approach to FMI access continuity at the level of resolution authorities has undeniable benefits.</p> <p>Yet, obligations and requirements set by FMIs depend on the FMIs and their risk management policies, on their rulebook that apply to their members but also on contractual arrangements that are individual. Besides, as far as CCPs are concerned, obligations and requirements depend on the considered segments.</p> <p>Ultimately, although there are many elements that can be captured at horizontal level, an assessment at individual level cannot be spared. Therefore, the RGL addresses FMI-related expectations to institutions and not only to authorities.</p>	No change.
Question 4: Do you have any comments on the proposed requirements to improve resolvability with regard to management information systems and information system testing?			
Dry runs	Most of the respondents express concerns about the balance between effort and added value with regard to dry runs (both paragraphs 14 and 76). Two of them argue that dry runs should be considered as addressing identified issues and not as routine exercises, given the effort they require. The RGL should mention the expected level of data accuracy and reporting timeline.	<p>Arrangements supporting resolvability should be implemented and tested to ensure their effectivity. The RGL do not request regular and complete dry runs, but raise institutions' and authorities' awareness about the fact that resolvability should not be assumed or theoretical. It is for institutions and authorities to elaborate a plan to test the different arrangements and capabilities supporting resolvability.</p> <p>The right cost/benefit balance and timeline have to be struck for each institution on an individual basis in line with the profile of the</p>	No change.



Comments	Summary of responses received	EBA analysis	Amendments to the proposals
	One respondent brings forward the general comment that elements relating to timing and timeline should be clarified in order for institutions to frame and budget IT investments.	institution, the level of confidence of the authorities and the preferred resolution strategy.	
Question 5: Do you have any comments on the proposed requirements to improve resolvability with regard to funding and liquidity in resolution?			
Liquidity position and liquidity driver identification	Two respondents require additional clarification as to whether paragraph 64 dealing with liquidity position short-notice reporting applies to non-MLEs and non-material currencies and regarding scenarios to be considered in the liquidity driver identification, as referred to in paragraph 65.	The RGL explicitly refer to material entities and material currencies respectively defined by footnotes 27 and 28. Paragraph 65 requires institutions to identify their liquidity drivers. It could be expected that institutions do it for the entire group without distinguishing between material and non-material entities/currencies in business-as-usual. Yet, liquidity analysis can be limited to material entities and material currencies, only if the institution is able to confirm that the liquidity needs of each non-material entity, and the obligations arising in each non-material currency, do not represent a risk to the liquidity position of the institution in resolution.	No change.
Liquidity analysis	One respondent argues that paragraph 68 regarding liquidity analysis should better define the concept of counterbalancing capacity. The respondent also regrets that paragraph 68 diverges from other existing requirements (e.g. SRB EfB) by introducing a new requirement, namely off-balance sheet item cash flow simulation.	The counterbalancing capacity is defined in the context of the ALMM reporting by Commission Implementing Regulation (EU)2017/2114. Please see EBA Q&A 2016_2897 for more information. Off-balance sheet items might generate cash inflows and outflows, are computed in LCR calculation and CBC calculation (contingencies) and should therefore be subject to liquidity analyses.	No change.



Comments	Summary of responses received	EBA analysis	Amendments to the proposals
Intragroup liquidity transfers	One respondent highlights that, while covering obstacles to intragroup liquidity transfers, paragraph 69 should better differentiate MPEs and SPEs and, more generally, pay particular attention to the group structure. The ranking of financial resources and liquidity reserves should also be taken into account as well as potential IPS contributions. Therefore, the paragraph should be rephrased accordingly.	<p>Paragraph 69 of the RGL applies at the resolution group level. Therefore, the MPE/SPE distinction is irrelevant. Nonetheless, the paragraph makes an explicit reference to the group structure in point e.</p> <p>All of the liquidity items referred to in paragraph 69 are not bail-inable and the potential outflow cannot be mitigated by writing down or converting liabilities.</p> <p>Paragraph 69 is not exhaustive. IPS contributions could be included to the extent that they can be expected. Should the IPS contribution be subject to its members' approval or its own governance, it cannot be ascertained that said contribution will occur. Institutions remain free to complement paragraph 70 with additional assumptions.</p>	No change.
Central bank funding	One respondent remarks that in order to comply with paragraph 70, institutions would need central banks to be clear on their collateral eligibility policy. The respondent further enquires whether provisions in paragraph 72-74 regarding access to ordinary central bank facilities refer to the run-up to resolution or the implementation of the resolution plan.	<p>The RGL are not addressed to central banks.</p> <p>Paragraphs 72-74 additionally specify the provision of paragraph 68 dealing with liquidity analysis over several time periods, from overnight to a sufficient time horizon following resolution (e.g. six months). It should therefore cover the resolution weekend to the implementation of the resolution plan.</p>	No change.
Access to ordinary central bank facilities	As part of the central bank facility access assessment, two respondents highlight that paragraphs 72 - 74 should consider recourse to public funding on a temporary	Paragraphs 72 - 74 of the RGL fall under the provision of paragraph 69.h. Therefore, while assessing central bank facility access,	No change.



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	<p>basis with additional collateral and adjusted haircuts.</p> <p>The same respondents recommend redrafting paragraph 74 to give institutions the option of simply referring to a regular liquidity management framework and recovery framework, instead of reporting their available collateral.</p>	<p>institutions are expected to consider 'the related terms and conditions for access and repayment'.</p> <p>Paragraph 74 of the RGL introduces expectations regarding capabilities and does not require reporting per se. Should an institution be able to report collateral information under the supervisory/recovery framework, then said institution should be able to comply. Collateral mobilisation is an important element of financial continuity and resolvability.</p>	
	<p>According to two respondents, paragraph 76 would be of better use if it encouraged central bank cross border cooperation by supporting a convergence of asset eligibility criteria enabling the constitution of a single collateral pool eligible to different central banks.</p> <p>They regret the general disregard of the RGL to central banks as lenders of last resort and to liquidity mitigating actions entailed by central bank support, before, during and after resolution. The ECB's publications could have comforted the RGL in this regard. In addition, the RGL could have elaborated on the role of resolution funds and DGS to increase the central bank</p>	<p>The RGL are not addressed to central banks.</p> <p>The resolvability of an institution does not depend on the central bank's lending policy, but on the capacity of an institution to meet the central bank criteria to access funding in the context of resolution.</p> <p>Besides, central bank funding might not be available regardless of the resolution tool. AMV and bridge institutions are not to benefit from central bank funding under the same conditions as an institution subject to bail-in. Therefore, the function of lender of last resort is not always relevant in resolution.</p>	<p>No change.</p>



Comments	Summary of responses received	EBA analysis	Amendments to the proposals
	eligibility of assets belonging to an institution subject to resolution.		
Stress scenario	One respondent considers that more information regarding FOLTF scenario should be disclosed: liquidity/solvency driven triggers, consolidation level, etc.	Article 10 BRRD requires resolution plans to address different scenarios with potentially different strategies. Therefore, resolvability and financial continuity should be assessed in the context of different scenarios. Resolution planning is very much the outcome of the dialogue between institutions and authorities. Therefore, it is for institutions and authorities to define how they want to proceed regarding scenarios.	No change.
Question 6: Do you have any comments on the proposed requirements to improve resolution implementation?			
Dry run paragraph 84	– Three respondents reiterate their comment that dry runs are costly, as they require preparations and are run in parallel with business-as-usual activities. They also require the involvement of third parties and their timing can be constrained by legal considerations. In order to follow a proportionate approach, paragraph 83 should recommend that dry runs be performed within reason using a sequential approach.	Arrangements supporting resolvability should be implemented and tested to ensure their effectivity. The RGL do not request regular and complete dry runs, but raise institutions’ and authorities’ awareness about the fact that resolvability should not be assumed or theoretical. It is for institutions and authorities to elaborate a plan to test the different arrangements and capabilities supporting resolvability. The right cost/benefit balance and timeline have to be struck for each institution on an individual basis in line with the profile of the institution, the level of confidence of the authorities and the preferred resolution strategy.	No change.
Bail-in mechanics	To some respondents, the high level wording of paragraphs 85 and 86 does not favour an effective implementation and	Bail-in mechanics are by definition jurisdiction-specific and the parties involved are different according to MS, institutions and their	Text amended to add a reference to existing national rules



Comments	Summary of responses received	EBA analysis	Amendments to the proposals
	<p>might lead to divergent interpretations. The respondents suggest the following:</p> <ul style="list-style-type: none"> - Define the cooperation framework between all parties and identify parties; - The RGL should take into consideration the publication by some authorities of relevant guidance by requesting bail-in playbooks to rely on already existing national guidance; - Define the deliverables and the relevant authorities, and describe the role of authorities regarding communication with (I)CSDs (paragraph 86.d) - Define unsettled transactions as referred to in paragraph 86.b and the related responsibilities of each party; - While setting expectations regarding bail-in playbook content, the RGL should specify in paragraph 86 how exchanges with FMIs could take place under MAR over the weekend before the intervention of the RA and the publication of the resolution scheme. 	<p>liabilities, cross-border relevance and whether resolution authorities foresee the issuance of interim securities. As a consequence, the RGL cannot identify at granular level the different parties and their respective responsibilities, the deliverables and exchange of information.</p> <p>The intervention of the resolution authorities occurs before the resolution weekend with suspension of trading and collection of the relevant data for valuation. Exchange with CSDs over the resolution weekend could trigger disclosure requirements under MAR only if actions and decisions made would qualify as inside information under article 7.1 MAR. As per paragraph 86.g of the RGL, institutions should highlight in their bail-in playbooks how they comply with MAR requirements.</p>	<p>and to define non-settled transactions.</p>



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Bail-in mechanics	<p>Three respondents also believe that the allocation of responsibility for disclosure to the market is not clear and should fall to authorities. This being said, one of the respondents expresses concerns regarding potential confidentiality issues, market misleading and liability issues entailed by disclosing bail-in mechanics.</p> <p>In case the responsibility would fall to institutions, one of the respondents requests further guidance regarding the means and timing of disclosures. In addition, the wording ‘deemed final’ of paragraph 88 does not prevent multiple versions of the bail-in mechanics, which would be counterproductive.</p>	<p>Pending further analysis on the possible scope of legally sound provision on disclosure of bail-in mechanics, the relevant provisions are deleted from the current set of GLs.</p>	<p>Text amended to delete the reference to disclosure obligations</p>
Processing provisional valuation results – para 90	<p>Two respondents wish for paragraph 90 to give more information regarding the valuation outcome format as delivered to institutions so it can technically feed into the institutions’ systems.</p>	<p>The EBA has published a valuation handbook giving guidance in terms of valuation report and valuation outcome. Yet, it is for institutions and authorities to decide on a format and it is up to bail-in playbooks to address the issue. The RGL do not need to focus particularly on this point.</p>	<p>No change.</p>
BRP	<p>Several respondents express strong doubt about the provision of a BRP as mentioned in paragraphs 92-104 and fear divergences in the application of the discretion left to authorities.</p>	<p>Under article 43.3 BRRD, authorities can apply bail-in only if there is a ‘reasonable prospect’ that the viability of the institution subject to resolution will be restored by bail-in and implementation of the reorganisation plan. Article 51.1 BRRD requests institutions to demonstrate that arrangements are in place to produce a BRP. The</p>	<p>No change.</p>



Comments	Summary of responses received	EBA analysis	Amendments to the proposals
	<p>As per the applicable framework, the BRP is to be delivered one month after resolution and will rely on the conditions leading to resolution as per CDR 2016/1400. The concept of 'high probability' is inadequate for a situation that cannot be foreseen and could be interpreted loosely.</p> <p>One respondent wonders how much different from recovery plans BRPs are and believes that institutions should not be requested to prepare content of a BRP beyond providing an overview of identified recovery options</p>	<p>confidence on the viability of the institution post resolution should reach a sufficient level before resolution.</p> <p>Hence, institutions are expected to be able to produce a preliminary version of the BRP, leveraging as much as possible on recovery plans. It can be argued that it is the intention of BRRD to have recovery measures feeding into the BRP, since article 51 is entitled 'recovery and reorganisation measures to accompany bail-in'. Therefore, the BRP should not be built up ex-nihilo and institutions have already some elements before resolution to comfort authorities on the use of the bail-in tool.</p> <p>The concept of 'high probability' is to be discussed between institutions and authorities to identify the potential components of the preliminary version of the BRP.</p>	
BRP	<p>Another respondent asks for the discretion given by paragraph 99 ('where relevant') to be further explained to facilitate the implementation of the paragraph.</p>	<p>The introduction of discretion is dictated by the fact that, although it is very likely, it is not always necessary to separate portfolios to restore viability of the institution post-resolution. The separation might only be necessary at the level of legal entities.</p> <p>An addendum on transferability will complement the separability assessment.</p>	No change.
BRP	<p>One respondent asks for the BRP to be taken into account by authorities in the MREL target calibration.</p>	<p>This request goes beyond the mandate under which the RGL are developed.</p>	No change.



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Reauthorisations and approvals	Two respondents question whether paragraph 104 contradicts the idea that approvals in the context of bail-in would be issued by way of order and be subject to relevant authorities for formal reasons only.	Paragraph 104 further elaborates on the provision of paragraph 103, stating that institutions and authorities should identify all the approvals and authorisations necessary to keep on operating. BRRD does not exempt resolved institutions from approvals and authorisations. Sale of business under articles 38 and 39 BRRD requires a supervisor’s qualifying holding assessment. To meet formal processes or satisfy regulatory conditions, necessary approvals and authorisations should be identified ex-ante.	No change.
Governance arrangement para 105	One respondent doubts that institutions can lay down in bail-in playbooks bail-in governance processes without access to the governance as described in resolution plans.	Defining procedures and processes to implement bail-in is quite independent from the resolution plan chapters dealing with governance structure. In any case, the governance arrangements, independently from any arrangements dealing with special manager, are in the hands of the institutions and the related input for resolution plans stems from institutions. Therefore, institutions are in full capacity of designing bail-in governance, and bail-in playbooks should explain how bail-in could be implemented.	No change.
Communication plan	Three respondents welcome the requirement laid down in paragraph 118 regarding a communication plan. However, one of them questions the relevance of pre-defining messages without information about the stress as requested. To be more effective, the RGL should give examples. Regarding the expectation about establishing call centres	Communication is key in resolution and tends to be overlooked as an aspect that requires preparation. Institutions should work on improving their communication arrangements, facilitating the implementation of the communication strategy. Yet, a more proportioned language is proposed here.	Text of para 118 amended to lower the details required.



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	on an ad hoc basis, the respondent is pessimistic and asks for more clarity on the timeline foreseen.		
Communication plan	One respondent suggests that resolution authorities should be subject to the same requirement. Inter-authority dialogue should be more transparent, and institutions should be consulted as much as possible about information shared between authorities.	<p>The suggestion has merit and the RGL emphasise on several occasions the need for authorities to cooperate and communicate with other authorities. Yet, the need to formalise the cooperation between authorities within a communication plan is part of the resolution plan under articles 10 and 12 BRRD.</p> <p>As for the transparency regarding exchange of information, article 84 BRRD establishes a confidentiality framework that can be complemented by a confidentiality agreement and MoUs that are published and easily accessible by institutions.</p> <p>Yet, separate work is being undertaken to tackle resolution disclosures.</p>	No change.
Bail-in playbook guidance	One respondent stresses that in order for all institutions (including non-BU institutions) to be able to deliver a proper bail-in playbook, the EBA should provide additional guidance regarding the expected content of said playbook.	As previously said, the implementation of bail-in will very much depend on national framework, types of liabilities, type of institutions, cross border relevance. Therefore, resolution authorities are better placed to give guidance about their bail-in playbook expectations.	No change.
Question 7: Do you have suggestions on areas of resolvability that would need to be further specified?			
	Some respondents regret that the RGL introduce a new set of requirements	The RGL are based on international standards and strongly supported by the applicable regulation.	No change.



Comments	Summary of responses received	EBA analysis	Amendments to the proposals
	<p>without capitalising on existing policies and standards.</p>		
	<p>Most of the respondents request clarification on the fact that the RGL supersede comparable policies, so institutions do not have to compare policies and methodologies to ensure they comply with the requirements. Applicable requirements should not be duplicated, and new requirements should clearly be identified, as should the repeal of existing requirements. Some respondents regret that the publication of the RGL comes after the publication of the SRB EfB. When institutions are subject to both EfB and the RGL, the respondents make two alternative suggestions:</p> <ul style="list-style-type: none"> - either EBA or SRB should publish a document cross-referencing or mapping the RGL and EfB identifying overlaps and gaps, - or the RGL should only be addressed to authorities which then should ensure compliance by the publication of adequate policies. Many respondents support the idea of the RGL being addressed only to authorities. 	<p>As per article 16 Regulation (EU) No 1093/2010, addressees should comply with EBA guidelines or explain why they cannot. Under the applicable regulation, both competent and resolution authorities should adjust their policies to align with EBA guidelines. Therefore, it is clear that EBA guidelines supersede any other policy in the matter. However, EBA guidelines set minimum standards that do not prevent authorities from additionally specifying them, if they deem it necessary to guarantee meeting resolvability objectives.</p>	<p>No change.</p>



Comments	Summary of responses received	EBA analysis	Amendments to the proposals
	<p>One of the respondents suggests that outside of the BU, the RGL should be supplemented by NRA's policies.</p> <p>Additionally, to one respondent when the RGL introduce new requirements, the expectations on how to tackle said requirements should be clearer. Another comments that the RGL should be written so they support institutions' efforts to reach resolvability and authorities' effort to provide guidance.</p>		
	<p>Some respondents also fear that the RGL overlap with existing supervisory requirements (going concern MIS, financial measures on service providers, etc.).</p>	<p>The RGL do not distinguish between expectations that are fully met because they are already tackled on the supervisory side based on other expectations. The RGL encompass as many elements as possible that support resolvability and leverages on existing policies and standards.</p> <p>The RGL are bound to remain at a level that cannot be granular. Yet, the RGL are as practical as possible.</p>	No change.
	<p>One respondent argues that, in order to help institutions to comply with resolvability expectations, resolution plans should be communicated to them.</p>	This element will be tackled by the work on resolution disclosures.	No change.
	<p>One respondent argues that the RGL should not set a reverse burden of proof, and when authorities do not observe shortcomings, resolvability should be assumed without being demonstrated.</p>	<p>Resolvability assessment under articles 15 and 16 BRRD cannot be assumed. It has to be assessed and the elements covered by section C of the annex to BRRD should be duly examined.</p>	No change.