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Final Report

Guidelines on the application of simplified obligations under
Article 4(5) of Directive 2014/59/EU

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1. Executive summary

Pursuant to Article 4(1) of Directive 2014/59/EU (the Directive) competent authorities and resolution authorities (the authorities) may apply simplified obligations with regard to:

- the contents and details of recovery and resolution plans provided for in Articles 5 to 12 of the Directive;
- the date by which the first recovery and resolution plans are to be drawn up and the frequency for updating recovery and resolution plans, which may be lower than that provided for in Article 5(2), Article 7(5), Article 10(6) and Article 13(3) of the Directive;
- the contents and details of the information required from institutions as provided for in Article 5(5), Article 11(1) and Article 12(2) and in Sections A and B of the Annex to the Directive; and
- the level of detail for the assessment of resolvability provided for in Articles 15 and 16 and Section C of the Annex to the Directive.

The authorities should decide on the level of detail regarding these requirements for each institution having regard to the impact that the failure and subsequent winding up of the institution under normal insolvency proceedings would have on financial markets, on other institutions, on funding conditions, or on the wider economy, taking account of the criteria set out in Article 4(1) of the Directive (the criteria). These criteria are the nature of the institution's business, its shareholding structure, its legal form, its risk profile, size and legal status, its interconnectedness with other institutions or to the financial system in general, the scope and the complexity of its activities, its membership of an institutional protection scheme (IPS) or other cooperative mutual solidarity systems as referred to in Article 113(7) of Regulation (EU) No 575/2013 and any exercise of investment services or activities as defined in point (2) of Article 4(1) of Directive 2014/65/EU.

Pursuant to Article 4(5) of the Directive, the guidelines further specify the criteria in order to promote convergence of practice between the authorities through a common framework for the application of simplified obligations, in line with the principle of proportionality. The guidelines are also intended to facilitate cooperation among the authorities when conducting assessments, in particular as regards institutions and groups with a cross-border presence, through the specification of the common framework.

The authorities should have regard to all of the criteria in the order specified in the guidelines (size, interconnectedness, scope and complexity of activities, risk profile, legal status, nature of business, shareholding structure, legal form, and the participation of an institution in an IPS or other mutual solidarity system). Some of the criteria play a distinctive role only in circumstances where the criteria which are the first in order to be assessed (size, interconnectedness,

complexity) do not conclude the analysis for the institution concerned in an unambiguous manner.

The guidelines clarify that globally systemically important institutions (G-SII) and other systemically important institutions (O-SII) should not be subject to simplified obligations as it is clear that the failure and subsequent winding up under normal insolvency proceedings of such institutions would be likely to have a significant negative effect on financial markets, on other institutions, on funding conditions or on the wider economy.

The guidelines include a number of mandatory indicators which should be used by the authorities when assessing institutions against the criteria listed in Article 4(1) of the Directive. Each mandatory indicator has been assigned to a specific criterion in order to promote a uniform approach to the assessment of institutions against the criteria.

A list of optional indicators is also set out in the guidelines. The authorities may take into account one or more of the optional indicators, in addition to the mandatory indicators, when assessing institutions against the criteria. In selecting and applying the optional indicators, the authorities should choose those indicators relevant to the institution, or category of institution (e.g. credit institution or investment firm), in question. The list of optional indicators includes all of the mandatory indicators in order that the authorities may use any indicator in relation to criteria other than the criterion to which it has been assigned as a mandatory indicator (e.g. the indicators 'total deposits' and 'total covered deposits' could be considered, for example, in relation to the 'nature of business' criterion as well as being required to be considered in relation to the 'scope and complexity of activities' criterion).

This approach (the combination of mandatory and optional indicators) ensures that the assessment process will be conducted in a proportionate manner in line with the characteristics of the institution or category of institution under consideration in the jurisdiction concerned. The guidelines are complemented by the EBA's draft implementing technical standards (ITS) specifying uniform formats, templates and definitions for the identification and transmission of information to the EBA on how the authorities have applied simplified obligations. The EBA will use information submitted in accordance with the ITS to assess how the principle of proportionality has been applied by the authorities for the purposes of informing the EBA's report to the European Parliament, the Council and the Commission under Article 4(7) of the Directive. This report shall, in particular, identify any divergences of approach between the authorities in terms of the assessment of institutions against the criteria (taking account of the guidelines) and the nature of the simplified obligations imposed in each case. The report must be submitted by 31 December 2017.

Next steps

The guidelines will be translated into the official EU languages and published on the EBA website. The deadline for competent authorities to report whether they comply with the guidelines will be two months after the publication of the translations. These guidelines apply from *[insert date: 2*

months and 1 day after the publication of the translations of the guidelines in all EU languages on the EBA website].

2. Background and rationale

2.1 Objective

1. The Directive sets out requirements for institutions and relevant parent undertakings (in relation to groups) to draw up and maintain recovery plans on an annual basis and provide information relevant for the development of resolution plans, and to submit that material to, respectively, the competent authorities and the resolution authorities. The information to be included in the recovery plans is set out in Section A of the Annex to the Directive and is further specified in the EBA's draft regulatory technical standards (RTS) on the content of recovery plans.¹ The Directive also sets out requirements for resolution authorities to draw up and maintain resolution plans for institutions and groups. Article 10(7) and Article 12(3) of the Directive specify the information to be included in resolution plans for, respectively, institutions and groups, as further specified in the EBA's draft RTS on resolution plan requirements.² Article 11 and Section B of the Annex to the Directive list the information resolution authorities may request for the purposes of drawing up and maintaining resolution plans. The Directive further requires resolution authorities to carry out resolvability assessments for institutions and groups (Article 10(2), Article 12(4) and Articles 15 and 16 of the Directive).
2. The requirements regarding recovery planning, resolution planning and resolvability assessments should be applied proportionately, reflecting *inter alia* the systemic importance of the institution concerned. Pursuant to Article 4 of the Directive authorities should decide on the level of detail regarding the relevant requirements for institutions having regard to the criteria specified in Article 4(1) of the Directive, as further specified in these guidelines. Competent authorities should make the assessment for recovery planning purposes and resolution authorities should make the assessment for resolution planning purposes, including for the purposes of conducting resolvability assessments. Competent authorities and, where relevant, resolution authorities shall make the assessment after consulting, where appropriate, the macroprudential authority (Article 4(2) of the Directive).
3. The authorities may decide to apply simplified obligations for institutions which, having regard to the criteria, are found to be non-systemic and whose failure and subsequent winding up under normal insolvency proceedings would not be likely to have a significant negative effect on financial markets, on other institutions, on funding conditions or on the wider economy. If an institution's failure and subsequent winding up under normal insolvency proceedings is

¹ The EBA's draft RTS and guidelines on recovery plans are available here: <http://www.eba.europa.eu/-/eba-publishes-final-draft-technical-standards-and-guidelines-on-recovery-plans>.

² The EBA's draft RTS on the content of resolution plans and the assessment of resolvability are available here: <http://www.eba.europa.eu/regulation-and-policy/recovery-and-resolution>.



considered to be likely to have a significant negative effect on financial markets, on other institutions, on funding conditions or on the wider economy, full obligations should apply.

4. The assessment as to whether it is appropriate for simplified obligations to apply shall be done regularly, for example when reviewing recovery plans or at any time when the relevant authority considers that, in light of the circumstances, it may be appropriate for simplified obligations (or full obligations) to apply. It is important that the assessment is kept under review as the information requirements and recovery and resolution strategy may change from time to time (for instance, when market conditions are benign a small institution's failure may not be regarded as potentially systemic, but under extreme market conditions it may be that the institution's failure and winding up under normal insolvency proceedings may have systemic implications necessitating a more detailed resolution plan to be put in place should that institution encounter serious financial difficulties).
5. The criteria specified in Article 4(1) of the Directive are:
 - size;
 - interconnectedness with other institutions or to the financial system in general;
 - the scope and the complexity of activities;
 - risk profile;
 - legal status;
 - nature of business;
 - shareholding structure;
 - legal form;
 - membership of an institutional protection scheme (IPS) or other cooperative mutual solidarity systems as referred to in Article 113(7) of Regulation (EU) No 575/2013 and any exercise of investment services or activities as defined in point (2) of Article 4(1) of Directive 2014/65/EU.
6. Article 4(5) of the Directive requires the EBA to issue guidelines on the criteria in Article 4(1) and, only after some experience is acquired with the application of the guidelines, to prepare draft RTS to specify the abovementioned criteria (Article 4(6) of the Directive). Further, Article 4(11) of the Directive requires the EBA to develop draft ITS to specify uniform formats,



templates and definitions for the identification and transmission of information to the EBA on how authorities have applied simplified obligations.³

2.2 Content

7. The Directive enumerates a set of criteria to which the authorities must have regard in determining whether simplified obligations shall apply. The authorities should have regard to all of these criteria in the order specified in the guidelines. Some of the criteria play a distinctive role only in circumstances where the criteria which are the first in order against which institutions are to be assessed (size, inter-connectedness, complexity) do not conclude the analysis for the institution concerned in an unambiguous manner.
8. The guidelines are intended to support the authorities in exercising judgement as regards the application of each of the criteria and set out indicators for the purposes of applying the criteria. A number of the indicators are 'mandatory' and have been assigned to specific criteria. Institutions should be assessed against these indicators.
9. In addition, when applying the criteria, the authorities may assess institutions against any of the 'optional' indicators listed in Annex 2 to the guidelines. The list of optional indicators includes all of the mandatory indicators in order that the authorities may use any indicator in relation to criteria other than the criterion to which it has been assigned (e.g. the indicator 'total deposits' could be considered, for example, in relation to the 'nature of business' criterion as well as being required to be considered in relation to the 'scope and complexity of activities' criterion).
10. In selecting and applying the optional indicators, the authorities should choose those indicators relevant to the institution, or category of institution (e.g. credit institution or investment firm), in question. Some of the optional indicators may be relevant to two or more of the criteria and institutions may be assessed against these indicators wherever the authorities consider it relevant for determining whether simplified obligations should apply.
11. As the assessment for the purposes of Article 4(1) of the Directive generally relates to the systemic significance of the institution, many of the indicators are the same as those included in the EBA's Guidelines on the criteria to determine the conditions of application of Article 131(3) of Directive 2013/36/EU (CRD) in relation to the assessment of other systemically important institutions (O-SIIs).⁴ However, some indicators are included in these guidelines which do not appear in the guidelines on the assessment of O-SIIs. These have been included in light of the specific purpose of the guidelines, which is to support the assessment

³ The EBA's draft ITS on the uniform formats, templates and definitions for the identification and transmission of information by competent authorities and resolution authorities to the EBA for the purposes of Article 4(7) of the Directive is available here: <https://www.eba.europa.eu/regulation-and-policy/recovery-and-resolution/implementing-technical-standards-on-simplified-obligations>

⁴ The guidelines are available here: <http://www.eba.europa.eu/documents/10180/930752/EBA-GL-2014-10+%28Guidelines+on+O-SIIs+Assessment%29.pdf> .

of the impact of the failure of an institution, even where its systemic relevance is not evident, for the purposes of determining the appropriate content and details of recovery plans, resolution plans and resolvability assessments, the frequency for updating the plans, and the information required from institutions for specified purposes (see Article 4(1)(a) to (d) of the Directive).

12. The assessment of the impact that the failure and subsequent winding up of the institution under normal insolvency proceedings would have on financial markets, on other institutions, on funding conditions, or on the wider economy taking account of the criteria in Article 4(1) of the Directive is ultimately a matter for the authorities' judgement, having regard to the criteria and the mandatory and relevant optional indicators.

13. In terms of the criteria:

14. **Size** is the first criterion for the authorities to consider.

15. As part of the assessment of size, the authorities should consider the ongoing international⁵ and European work to identify globally systemically important institutions (G-SII) and other systemically important institutions (O-SII). Where institutions have been internationally recognised as systemically important it is assumed that an assessment has been conducted already on the potential impact of their failure and that the potential impact has been determined to be significant. Accordingly, it is not appropriate to apply simplified obligations to such institutions. For other institutions it is clear that the larger the institution the more likely it is that its failure and subsequent winding up under normal insolvency proceedings would cause disruption to the financial markets, to other institutions, to funding conditions, or the wider economy, and the less likely it is that simplified obligations would be appropriate.

16. The next criterion for authorities to consider is the **interconnectedness** of the institution, including to other institutions and entities within its group (if relevant) and to other institutions and market participants. The more interconnected an institution is with others (for instance, as a result of inter-financial system exposures) the more likely it is that its financial distress and subsequent winding up under normal insolvency proceedings would materially increase the likelihood of distress to other institutions, taking account of financial, operational and contractual links. For institutions providing payment, settlement and clearing services it is likely that their winding up under normal insolvency proceedings would impact adversely the service receiver's ability to perform its business activities as the continuity of service provision would be disrupted and substitute service providers might not be available. Therefore, greater interconnectedness is likely to imply that simplified obligations will be less appropriate, particularly as more detailed information is likely to be needed (for example to assess fully the implications of recovery measures and resolution actions for the institution concerned that

⁵ BIS, Global systemically important banks: assessment methodology and the additional loss absorbency requirement <http://www.bis.org/publ/bcbs207.pdf>.



may affect relationships with different counterparties in order to minimise adverse impacts on financial stability).

17. The authorities must also consider the **scope and complexity of activities** conducted by an institution in making an assessment of the potential effects of an institution's failure and subsequent winding up under normal insolvency proceedings. The assessment should involve identifying the economic functions performed by the institution, including their scale, and determining the criticality of the functions for the financial markets, other institutions and the wider economy, and their substitutability. For example, where there are no willing substitutes capable of performing effectively the institution's functions within the market, an institution's failure and its subsequent winding up under normal insolvency proceedings may have a significant negative impact on the financial markets, on other institutions, on funding conditions or the wider economy, in which case simplified obligations are less likely to be appropriate.
18. Further, the authorities must consider the **risk profile** of an institution. To assess this criterion, the authorities should consider the assessment of risks performed in accordance with Articles 97 and 107 of Directive 2013/36/EU and further specified in the EBA's guidelines for common procedures and methodologies for the supervisory review and evaluation process (SREP Guidelines).⁶ The more risk an institution takes, the more it may lead to significant exposures that could result in its financial distress, potentially necessitating recovery actions and, should they prove unsuccessful, resolution. In such cases, authorities may determine that an institution should be subject to full obligations in order to ensure that authorities have sufficient information to ensure that adequate recovery and resolution plans are in place.
19. The **legal status** criterion refers to the regulated activities which the institution has permission to carry out and whether advanced models are used for the calculation of own funds requirements for credit, market and operational risk.
20. The **nature of the business** of an institution is another criterion which the authorities must assess in order to determine the impact of an institution's failure and subsequent winding up under normal insolvency proceedings. The geographical dispersal of an institution's activities and the structure of the operations within the banking market with regard to its organisation and concentration in terms of the market it serves (including as regards individual business lines and core business services) may affect whether an institution can be wound up under normal insolvency proceedings without significant negative effects on the markets in which it operates, on other institutions, on funding conditions or on the wider economy.
21. The **shareholding structure** must be considered as it might affect the availability of certain recovery and resolution options. For instance, the specific characteristics of the ownership structure (e.g. highly concentrated or dispersed) and the interconnectedness of the institution

⁶ The SREP Guidelines are available here: <http://www.eba.europa.eu/documents/10180/748829/EBA-CP-2014-14+%28CP+on+draft+SREP+Guidelines%29.pdf>.



within a group may affect the extent to which it can be wound up under normal insolvency proceedings without causing disruption to other group entities and to the market as a whole.

22. The authorities must also assess the **legal form** of an institution to understand whether it is feasible for the institution to be wound up under normal insolvency proceedings.
23. Finally, the authorities must consider the participation of an institution in an institutional protection scheme (IPS) or other cooperative mutual solidarity systems.
24. IPSs and cooperative mutual solidarity systems between institutions aim to protect the system as a whole. A failure of an institution which is a member of an IPS would put the objective of protecting every single participant in the scheme at risk. For most schemes there are central institutions (affiliation banks) that are responsible within the schemes for clearing, treasury and other services for affiliated institutions; these may be critical functions for the schemes. Their failure would cause serious deterioration in affiliated institutions' economic condition and would disturb centrally performed services. This would indicate that simplified obligations are not appropriate for these institutions.
25. In cases where the sizes of the participants in a scheme vary substantially, the largest institutions of the scheme may put the IPS and its other members at risk or lead to contagion risk should they encounter serious financial difficulties, i.e. the other participants of the scheme would have to cover the losses of this institution, which could worsen their own situation. This risk is diminished if the aid funds are sufficient in size. For institutions that could cause the failure of the whole IPS or that meet other criteria within the guidelines, simplified obligations are not appropriate.

3. EBA guidelines on the application of simplified obligations under Article 4(5) of Directive 2014/59/EU

Guidelines

on the application of simplified obligations under Article 4(5) of Directive 2014/59/EU

1. Compliance and reporting obligations

Status of these guidelines

1. This document contains guidelines issued pursuant to Article 16 of Regulation (EU) No 1093/2010⁷. 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 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. Under 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 *[insert date: 2 months after the publication of the translations of the guidelines in all EU languages on the EBA website]*. 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 to compliance@eba.europa.eu with the reference 'EBA/GL/2015/16'. 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).

⁷ 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, referred to in Article 4(5) of Directive 2014/59/EU⁸ (the Directive), specify the criteria for assessing, in accordance with Article 4(1), the impact of an institution's failure and subsequent winding up under normal insolvency proceedings on financial markets, on other institutions and on funding conditions for the purposes of determining whether simplified obligations should apply to the institution concerned.
6. The outcome of a determination by a competent authority or resolution authority as to the eligibility of an institution, or category of institution, for simplified obligations may be transmitted to the institution concerned in accordance with professional secrecy requirements applicable in the Member State concerned.

Scope of application

7. These guidelines apply in relation to the application of the criteria listed in Article 4(1) of the Directive (the criteria) for the purposes of determining whether institutions should be subject to simplified obligations pursuant to that paragraph. The Directive does not attribute a weighting to each of the criteria. For this reason the guidelines do not attribute a weighting to the criteria or to the indicators set out in the guidelines. However, the Directive and guidelines do not prevent the competent authorities and resolution authorities from applying a weighting (e.g. a *de minimis* weighting for some of the criteria) should they consider that appropriate for the purposes of the assessment exercise. Furthermore competent authorities and resolution authorities may conduct the assessment of eligibility on an institution-specific or category basis. The latter approach may be used where two or more institutions have similar characteristics for the purposes of the application of the criteria (e.g. they fall within a particular size range in terms of total assets or total assets/GDP). It is for the competent authorities and the resolution authorities to determine how to approach the categorisation (or, put differently, 'bucketing') process. For instance, the authorities may choose to frame the parameters of each category by reference to the mandatory indicators assigned to the criteria of size (and potentially other of the criteria) and then assess each category or 'bucket' of institution against the criteria. Another approach would be to establish the parameters of each category by reference to all of the criteria (essentially to build a 'decision tree' to establish eligibility for simplified obligations) as further explained in paragraph 15.

⁸ 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, pp. 190–348).

Addressees

8. These guidelines are addressed to competent authorities as defined in point (i) and to resolution authorities as defined in point (iv) of Article 4(2) of Regulation (EU) No 1093/2010.
9. Competent authorities should assess institutions against the criteria for recovery planning purposes and resolution authorities should assess institutions against the criteria for resolution planning purposes, including for the purposes of conducting resolvability assessments, at the level at which the obligation to carry out planning and assessments applies. Article 3(7) of the Directive requires competent authorities and resolution authorities to take into account the potential impact of the decision in all the Member States where the institution or the group operates, when taking a decision under the Directive. Under Article 4(2) of the Directive, competent authorities and, where relevant, resolution authorities shall make the assessment after consulting, where appropriate, the macroprudential authority. On the basis of the application of the criteria it is possible that a competent authority and a resolution authority in a Member State may choose to adopt different approaches to the application of the simplified obligations due to the differing purposes for which the assessment is to be conducted by the authority concerned (i.e. recovery planning on the part of the competent authority and resolution planning and resolvability assessments on the part of the resolution authority). In such cases, however, competent authorities and resolution authorities, in the spirit of cooperation, should strive to achieve a consistent approach to the application of simplified obligations.

Definitions

10. Unless otherwise specified, terms used and defined in the Directive have the same meaning in the guidelines. In addition, for the purposes of these guidelines, the definitions set out in Annex 1 shall apply.
11. If indicator values in accordance with Annex 1 to these guidelines are not available competent authorities and resolution authorities should use appropriate proxies. In this case the competent authorities and the resolution authorities should ensure that those proxies are properly explained and correlate to the greatest extent possible with the definitions in Annex 1.

3. Implementation

Date of application

12. These guidelines apply from *[insert date: 2 months and 1 day after the publication of the translations of the guidelines in all EU languages on the EBA website]*.

4. Requirements regarding the criteria for the assessment of the application of simplified obligations

General principles

13. These guidelines further specify the criteria by setting out a list of mandatory indicators against which institutions should be assessed by competent authorities and resolution authorities when determining whether it is appropriate for simplified obligations to be applied to the institution (or category of institution) in question having regard to the criteria. In addition, competent authorities and resolution authorities may assess institutions against any of the optional indicators listed in Annex 2 to the guidelines. In selecting and applying the optional indicators, those indicators relevant to the institution, or category of institution, should be chosen. The list of optional indicators includes all of the mandatory indicators in order that the competent authorities and the resolution authorities may use any indicator in relation to criteria other than, and in addition to, the criterion to which the indicator has been assigned as a mandatory indicator.
14. This approach is intended to promote convergence of practice between competent authorities and resolution authorities when assessing institutions against the criteria listed in Article 4(1) of the Directive while ensuring that the assessment is conducted in a proportionate manner. Where competent authorities and resolution authorities take account of optional indicators, an explanation should be provided to the EBA in the course of reporting on the application of the criteria in accordance with the ITS under Article 4(11) of the Directive, for the purposes of developing RTS in accordance with Article 4(6) and to inform the EBA report in accordance with Article 4(7) of the Directive.
15. The indicators provided in these guidelines should be used by each competent authority and resolution authority to assess the institutions established within a Member State, either on a case-by-case basis or by categorising them (or, put differently, bucketing them). As a basis for categorisation, competent authorities should consider using as a starting point the categorisation of institutions under the EBA Guidelines on common procedures and methodologies for the supervisory review and evaluation process (SREP Guidelines) (EBA/GL/2014/13), which are based on the assessment of systemic risk⁹. However, competent

⁹ As set out in the EBA's Guidelines for common procedures and methodologies for the supervisory review and evaluation process under Article 107(3) of Directive 2013/36/EU, which are available here: <http://www.eba.europa.eu/documents/10180/748829/EBA-CP-2014-14+%28CP+on+draft+SREP+Guidelines%29.pdf>. Competent authorities should categorise all institutions under their supervisory remit into the four categories, based on



authorities and resolution authorities may choose, in addition or as an alternative, to categorise or bucket institutions together for the purposes of establishing categories for the process of assessing the eligibility of institutions for simplified obligations using the mandatory indicators assigned to specified criteria (e.g. size and interconnectedness).

16. Institutions should be assessed against each of the criteria listed in Article 4(1) of the Directive using the mandatory indicators set out in these guidelines and in the order provided in these guidelines. It may be that, having regard to the mandatory indicators for one of the criteria (e.g. size or interconnectedness), it is clear that an institution's failure and winding up under normal insolvency proceedings would have a significant negative effect on financial markets, on other institutions, on funding conditions or on the wider economy, in which case that will be determinative (i.e. full obligations should be applied). In such cases it is not necessary for the relevant authority to conduct a detailed assessment of the institution against the other criteria and the mandatory indicators set out in these guidelines because it is clear already that the institution concerned is ineligible for simplified obligations. In other cases, the assessment of the institution against an individual criterion may not be determinative but, taken together with the results of the assessment of the institution against the other criteria, the institution's failure and orderly winding up under normal insolvency proceedings may be determined to be likely to have a significant negative effect. Competent authorities and resolution authorities should have regard to all of the criteria before a positive assessment of eligibility for simplified obligation is made by the authority concerned.
17. In addition, the assessment of two or more institutions against a particular criterion taking account of specific indicators may point towards different outcomes in terms of eligibility for simplified obligations. For example, two institutions may have very different business activities: one may offer payment, settlement and clearing services that are not readily substitutable, and therefore the institution may be seen as systemic to the point that its failure under normal insolvency proceedings would have a significant negative effect on financial markets, on other institutions and or on funding conditions; another institution may offer critical economic functions that can be easily substituted by other market participants.
18. These guidelines do not attribute a weighting to each of the criteria or the indicators. This ensures that the criteria are capable of being applied in a flexible way to the full range of institutions falling within the scope of the Directive. This does not prevent the competent authorities and the resolution authorities from applying a weighting (e.g. a *de minimis* weighting for some of the criteria) should they consider that appropriate for the purposes of the assessment process.

the institution's size, structure and internal organisation, and the nature, scope and complexity of its activities. The categorisation should reflect the assessment of systemic risk posed by institutions to the financial system.



19. Competent authorities and resolution authorities should have particular regard to an institution's individual designation as a G-SII or O-SII¹⁰ by virtue of Article 131 of Directive 2013/36/EU when applying the criteria listed in Article 4(1) of the Directive, as evidence of the institution's systemic relevance in accordance with recital 14 of the Directive. Competent authorities should also consider institutions categorised as Category 1, in accordance with the SREP Guidelines.
20. Institutions designated as G-SIIs, O-SIIs, or other institutions in Category 1 under the SREP Guidelines, should be subject to full obligations. This is because, on the basis of the application of the relevant methodology for identifying G-SIIs and O-SIIs, it is clear that the failure and subsequent winding up under normal insolvency proceedings of such institutions would be likely to have a significant negative effect. Therefore it is not necessary to conduct a detailed assessment of such institutions against the criteria listed in Article 4(1) of the Directive for the purposes of establishing whether their failure and winding up under normal insolvency proceedings would be likely to have a significant negative effect on financial markets, on other institutions, on funding conditions or on the wider economy.
21. Nevertheless, these guidelines should not be construed as an indication that institutions which have not been designated as G-SIIs or O-SIIs automatically qualify for simplified obligations under Article 4 of the Directive; an assessment under these guidelines should always be carried out for those institutions to determine whether simplified obligations are appropriate.
22. Competent authorities and resolution authorities are permitted to apply different or significantly reduced information requirements for the purposes of recovery and resolution planning in relation to institutions that are determined to be eligible for simplified obligations; authorities may choose to apply different sets of simplified obligations to different categories of institution. The indicators set out in these guidelines may be used by competent authorities and resolution authorities for the purposes of informing their decision on the nature of the simplified obligations to be applied to the institution(s) in question.
23. Competent authorities and resolution authorities should ensure that they are kept informed of changes to an institution's business or structure relevant to the criteria in order to ensure that the application of full or simplified obligations remains appropriate. The simplified regime should be revoked when the basis for the application of the simplified obligations is no longer met and it is determined that an institution's failure and winding up under normal insolvency proceedings would be likely to have a significant negative effect on financial markets, on other institutions, on funding conditions or on the wider economy.
24. It is also noted that the determination that an institution is eligible for simplified obligations shall not preclude an assessment that the conditions for resolution are satisfied pursuant to

¹⁰ i.e. The institution's status rather than that of its parent company or group.

Article 32 of the Directive and that a resolution tool may be applied having regard to the resolution objectives in Article 31 of the Directive.

Size

25. Competent authorities and resolution authorities should assess the following when determining whether the criterion of the size of an institution means that its failure and subsequent winding up under normal insolvency proceedings would be likely to have a significant negative effect on financial markets, on other institutions or on funding conditions:

- (a) total assets;
- (b) total assets/Member State's GDP;
- (c) total liabilities.

26. In the case of investment firms competent authorities and resolution authorities should assess the following in addition to the mandatory indicators referred to above:

- (a) total fees and commission income.

Interconnectedness

27. Competent authorities and resolution authorities should assess the following when determining whether the criterion of the interconnectedness of an institution means that its failure and subsequent winding up under normal insolvency proceedings would be likely to have a significant negative effect on financial markets, on other institutions or on funding conditions:

- (a) inter-financial system liabilities;
- (b) inter-financial system assets;
- (c) debt securities outstanding.

Scope and complexity of activities

28. Competent authorities and resolution authorities should assess the following when determining whether the criterion of the scope and complexity of an institution means that its failure and subsequent winding up under normal insolvency proceedings would be likely to have a significant negative effect on financial markets, on other institutions or on funding conditions:

- (a) value of OTC derivatives (notional);
- (b) cross-jurisdictional liabilities;
- (c) cross-jurisdictional claims;
- (d) deposits and total covered deposits.

Risk profile

29. Competent authorities and resolution authorities, to the extent possible and where relevant, should consider the assessment of risks performed in accordance with Articles 97 and 107 of Directive 2013/36/EU and further specified in the SREP Guidelines when assessing institutions against the criterion of risk profile.

Legal status

30. Competent authorities and resolution authorities, when assessing institutions against the criterion of legal status, should take the following into account:

- (a) the regulated activities which the institution has permission to carry out;
- (b) whether advanced models are used for the calculation of own funds requirements for credit, market and operational risk.

Nature of business

31. Competent authorities and resolution authorities should assess the following when determining whether the criterion of the nature of the business of an institution means that its failure and subsequent winding up under normal insolvency proceedings would be likely to have a significant negative effect on financial markets, on other institutions or on funding conditions:

- (a) the institution's business model, its viability and the sustainability of the institution's strategy based on the outcomes of the business model analysis performed as part of SREP in accordance with the with Articles 97 and 107 of Directive 2013/36/EU and further specified in the SREP Guidelines. For this purpose authorities may use the SREP score assigned to business model and strategy;



- (b) the institution's position in the jurisdictions in which it operates in terms of the critical functions and core business lines offered in each jurisdiction.

Shareholding structure

32. Competent authorities and resolution authorities should assess the following when determining whether the criterion of the shareholding structure of an institution means that its failure and subsequent winding up under normal insolvency proceedings would be likely to have a significant negative effect on financial markets, on other institutions or on funding conditions:

- (a) whether shareholders are concentrated or dispersed, in particular taking account of the number of qualified shareholders and the extent to which the shareholding structure may impact, for example, the availability of certain recovery actions for the institution.

Legal form

33. Competent authorities and resolution authorities should assess the following when determining whether the criterion of the legal form of an institution means that its failure and subsequent winding up under normal insolvency proceedings would be likely to have a significant negative effect on financial markets, on other institutions or on funding conditions:

- (a) the structure of an institution in terms of whether the institution is part of a group and, if so, whether the group has a complicated or simple structure and the degree to which entities are interconnected, having regard to financial and operational interdependencies;
- (b) the type of incorporation of the institution (e.g. private limited company, limited liability company or other type of company defined in national law).

Membership of an IPS or other cooperative mutual solidarity systems

34. Competent authorities and resolution authorities should assess the following when determining whether the criterion of membership of an IPS or other cooperative mutual solidarity system means that an institution's failure and subsequent winding up under normal insolvency proceedings would be likely to have a significant negative effect on financial markets, on other institutions or on funding conditions:

- (a) the function of the institution in the system as participant or central institution or as provider of critical functions to other participants, or potentially as a party exposed to the scheme's concentration risk;
- (b) the size of the guarantee fund relative to the institution's total funds.

Annex 1 – Definitions¹

Indicator	Scope	Definition
Total assets	worldwide	FINREP (IFRS or GAAP) — F 01.01, row 380 column 010
Total liabilities	worldwide	FINREP (IFRS or GAAP) — F 01.02, row 300 column 010
Deposits	worldwide	FINREP (IFRS or GAAP) — F 01.02, row 80 column 010
Value of OTC derivatives (notional)	worldwide	FINREP (IFRS) → F 10.00, rows 300+310+320, column 030 + F 11.00, rows 510+520+530, column 030 FINREP (GAAP) → F 10.00, rows 300+310+320, column 050 + F 11.00, rows 510+520+530, column 030
Cross-jurisdictional liabilities	worldwide	FINREP (IFRS or GAAP) → F 20.06, rows 010+040+070, column 010, All countries except home country (z-axis) Note: The calculated value should exclude i) intra-office liabilities and ii) liabilities of foreign branches and subsidiaries vis-à-vis counterparties in the same host country
Cross-jurisdictional claims	worldwide	FINREP (IFRS or GAAP) → F 20.04, rows 010+040+080+140, column 010, All countries except home country (z-axis) Note: The calculated value should exclude i) intra-office assets and ii) assets of foreign branches and subsidiaries vis-à-vis counterparties in the same host country
Inter-financial system liabilities	worldwide	FINREP (IFRS or GAAP) → F 20.06, rows 020+030+050+060+100+110, column 010, All countries (z-axis)
Inter-financial system assets	worldwide	FINREP (IFRS or GAAP) → F 20.04, rows 020+030+050+060+110+120+170+180, column 010, All countries (z-axis)
Debt securities outstanding	worldwide	FINREP (IFRS or GAAP) → F 01.02, rows 050+090+130, column 010

¹ If indicator values in accordance with Annex 1 are not available competent authorities and resolution authorities should use appropriate proxies where available (e.g. from national GAAP). In this case the competent authorities and resolution authorities should ensure that those proxies are properly explained and correlate to the greatest extent possible with the definitions in Annex 1.

Annex 2 – Optional indicators¹

Optional indicator

Total assets
Total EAD
Total assets/Member State's GDP
Total EAD/Member State's GDP
Total RWAs
Total liabilities
Total client money
Total client assets
Total fees and commission income
Market capitalisation
Value of assets under custody
Value of OTC derivatives (notional)
Inter-financial system liabilities
Inter-financial system assets
Cross-jurisdictional liabilities
Cross-jurisdictional claims
Debt securities outstanding
Value of domestic payment transactions
Total deposits
Total covered deposits
Private sector deposits from depositors in the EU
Value of private sector loans, including committed facilities and syndicated loans
Number of private sector loans
Number of deposit accounts – business
Number of deposit accounts – retail
Number of retail customers
Number of domestic subsidiaries and branches
Number of foreign subsidiaries and branches (to be broken down into subsidiaries and branches established in other Member States and in third countries)
Membership of financial market infrastructure
Critical functions provided by the institution to other group companies or by group companies to the institution
Critical functions and core business lines in each relevant jurisdiction, including the provision of services to other institutions
Provision of clearing, payment and settlement services provided to market participants or others and number of other providers available to the market
Payment services provided to market participants or others and number of other providers available to the market
Geographical breakdown of the institution's activity (including the number of jurisdictions in which the institution, and subsidiary entities, operates and the size of the operations)
The institution's market share per business line per jurisdiction (for example, deposit-taking, retail mortgages, unsecured loans, credit cards, SME lending, corporate lending, trade finance, payments activities and the provision of other critical services)

Optional indicator

Private sector loans to domestic recipients
Private sector loans to recipients in a specific region
Mortgage loans to recipients in the EU
Mortgage loans to domestic recipients
Retail loans to recipients in the EU
Retail loans to domestic recipients
SREP score (overall)
SREP scores assigned to capital adequacy, liquidity adequacy, internal governance and institution-wide controls assessments
Regulated activities for which the institution has permission to carry out
Whether advance models are used for the calculation of own funds requirements for credit, market and operational risk
The overall institution's business model, its viability and sustainability of the institution's strategy based on the outcomes of the business model analysis performed as part of SREP according to the SREP Guidelines
The institution's position in the jurisdictions in which it operates in terms of the critical functions and core business lines offered in each jurisdiction
Whether shareholders are concentrated or dispersed, in particular taking account of the number of qualified shareholders and the extent to which the shareholding structure may impact, for example, the availability of certain recovery actions for the institution
The structure of an institution in terms of assessing whether the institution is part of a group and, if so, whether the group has a complicated or simple structure having regard to financial and operational inter-dependencies
The type of the incorporation of the institution (for example, a private limited company, a limited liability company or other type of company defined within national law)
The function of the institution in the system as participant or central institution or as provider of critical functions to other participants, or potentially as a party exposed to the scheme's concentration risk
The size of the guarantee fund relative to the institution's total funds
The type of the mutual solidarity system and its risk management policies and procedures
The degree of interconnectedness to other IPS participants

¹ All of the mandatory indicators assigned to an individual criterion are included in the list of optional indicators. Competent authorities and resolution authorities may take these into account, in addition, when assessing institutions against other criteria (i.e. those criteria in relation to which the relevant indicator has not been assigned as a mandatory indicator).

4. Accompanying documents

4.1 Impact assessment

Article 4(5) of the Directive requires the EBA to develop guidelines to specify the criteria referred to in Article 4(1) of the Directive for determining whether the failure of an institution and its subsequent winding up under normal insolvency proceedings would be likely to have a significant negative effect on financial markets, on other institutions and on funding conditions and, accordingly, whether the institution in question is eligible for simplified obligations within the framework of recovery and resolution planning and resolvability assessments.

This section of the report presents an impact assessment (IA) with cost–benefit analysis of the provisions included in the guidelines described in this report. Given the nature of the guidelines, the IA is mostly high level and qualitative in nature.

A. Problem identification

The guidelines aim to address potential shortcomings in the effective application by competent authorities and resolution authorities of the criteria for assessing whether institutions may be subject to simplified obligations in the context of recovery and resolution planning and resolvability assessments.

A major problem that the guidelines aim to address is the lack of a harmonised approach at the EU level to define the criteria for assessing when institutions should be eligible for simplified obligations in the framework of recovery and resolution. The criteria specified in Article 4(1) of the Directive are stated in relatively broad terms and are therefore open to interpretation. Without further elaboration, variations may emerge in terms of the approach of the competent authorities and resolution authorities when applying the criteria.

It is reasonable to expect that the divergences could lead to problems, including:

- (a) asymmetric information between authorities in different Member States when there is a need for cooperation in cross-border cases;
- (b) an uneven playing field for institutions in the EU, i.e. different treatment of various institutions with the same characteristics or of various institutions belonging to the same cross-border groups, due to different supervisory/resolution practices;
- (c) regulatory arbitrage, i.e. institutions may cease their operations in Member States where the regulatory framework is stricter and/or less predictable and relocate to Member States with more favourable regulatory frameworks.



The 'options considered' section of this IA presents a qualitative assessment of the alternative options and identifies a set of options that can effectively address these problems to varying degrees.

B. Policy objectives

The objective of these guidelines is to promote convergence of supervisory and resolution practices regarding the interpretation of the criteria specified in Article 4(1) of the Directive to be taken into account in assessing when an institution may be subject to simplified obligations for the purposes of recovery and resolution planning and resolvability assessments. A central element to establishing such a harmonised framework is to specify a common set of criteria and/or indicators¹¹ which can be used by the competent authorities and resolution authorities in the Member States when assessing institutions against these criteria. A common framework is expected to achieve a consistent and systematic application of the proportionality principle. It is also expected to facilitate cooperation among authorities, in particular as regards institutions with cross-border operations. The framework ultimately aims to promote the principle of proportionality, and the effective and efficient functioning of the EU banking sector.

C. Baseline scenario

Most Member States are currently preparing reporting procedures for the purposes of the recovery and resolution framework. Although some convergence is expected under the framework of the Directive, variations may arise between Member States as regards the application of the criteria specified in Article 4(1) of the Directive. Currently, some Member States apply a proportionality principle although the cases are handled without regard to any specific criteria and on an ad-hoc basis (AT). In some Member States the requirements are applicable to all institutions in the jurisdiction (UK) or the national regulatory framework covers systemically important institutions only, with no reference to non-systemic institutions (DE). In some cases, the recovery plan obligations do not apply to the institutions with a balance sheet value below certain threshold¹² (DK). Hence, the criteria to be taken into account for the purposes of recovery and resolution (e.g. systemic importance, size), the indicators and the obligations the institutions need to satisfy to fall under certain categories vary across Member States.

D. Options considered

Both competent authorities and resolution authorities have a role to play in the determination that an institution is eligible for simplified obligations for relevant purposes. The authorities also need to monitor the characteristics of the institutions over time and revise the decisions if

¹¹ Terminology: throughout the text the term 'criterion' is used for the concepts defined in the Directive and the term 'indicator' is used for the elements that are considered under each criterion.

¹² That is, DKK 1 billion.



necessary (e.g. to reinstate full obligations where an institution's business has grown to such a scale that it is no longer appropriate for simplified obligations to apply).

This section of the IA will discuss the advantages and disadvantages of a set of technical options for the identification of the institutions to which simplified obligations may be applied and will then provide an illustration of the indicator-based measurement approach.

The assessment considers the following options:

- (a) a set of generic criteria without specific indicators (Option A);
- (b) an exhaustive list of criteria with specific indicators together with weights for these indicators and upper thresholds for the overall score (Option B);
- (c) a set of criteria together with mandatory and optional indicators to define these criteria, with no specification of the methodology (Option C).

E. Cost–benefit analysis

Under Option A, a qualitative and more generic framework could be developed to outline the criteria identified in the Directive. Under this option, the competent authorities and resolution authorities would have complete freedom to decide which indicators to assess in relation to each criterion. Using this approach would imply that general terms such as 'nature of business', 'interconnectedness', 'complexity' and 'risk profile' be included in the guidelines as criteria without further elaboration.

The costs and benefits of Option A are expected to be negligible. Under the Directive framework some convergence is expected as a result of the specification of the criteria in Article 4(1) of the Directive. However, this alone would not be expected to promote further convergence in supervisory and resolution practice since it does not introduce any indicators for the definition of the criteria. The option would allow competent authorities and resolution authorities wide discretion and therefore would not address the identified problems.

Under Option B, an exhaustive list of criteria and indicators for competent authorities and resolution authorities could be developed. The option also suggests a basis for the methodology, e.g. certain predefined weights and cut-off points for the indicators.

For example, if we assume that there are four criteria and the only indicator for the 'size' criterion is the 'assets value' for a particular institution, then the criterion, and hence the indicator, has a weight of 25% in the calculation.

Option B proposes the following framework:

Criteria	Weight for the criteria (%)	Indicators (weight in %)
Size	$(1/n^*) \times 100$	Indicator a1 $((1/a^\dagger) \times 100)$
Interconnectedness	$(1/n) \times 100$	Indicator b1 $((1/b^\ddagger) \times 100)$ Indicator b2 $((1/b) \times 100)$
Complexity/cross border	$(1/n) \times 100$	Indicator c1 $((1/c^\natural) \times 100)$ Indicator c2 $((1/c) \times 100)$
...

* n = the total number of criteria considered for the calculation.

† a = the total number of indicators considered in the size criterion.

‡ b = the total number of indicators considered in the interconnectedness criterion.

¶ c = the total number of indicators considered in the complexity/cross-border criterion.

If an institution's final score, i.e. the weighted average of the indicators, falls below a certain threshold, then it may qualify for simplified obligations.

However, institutions across Member States may have different characteristics, both within a jurisdiction and across jurisdictions, that the competent authorities and resolution authorities should take into account for the purposes of determining the impact of failure. Option B would not permit qualitative assessment to accommodate these differences (e.g. as a result of different competent authorities and resolution authorities assigning different weights to the criteria); it does not leave room for judgement in the decision-making process (e.g. in terms of taking account of other criteria or indicators that may be relevant to a particular institution) and is therefore too rigid.

Option C aims to find a balance between fully flexible and fully harmonised standards for the identification of the eligibility of institutions for simplified obligations across the Member States. It proposes a set of criteria and indicators that all competent authorities and resolution authorities should take into account when assessing institutions against the criteria specified in Article 4(1) of the Directive but also permits, in addition, other indicators to be taken into account.

Table 1 presents a summary of the potential benefits and costs associated with of the options.

Table 1 Potential benefits and cost associated with the options

	Potential benefits	Potential costs
A set of generic criteria without specific indicators (Option A)	A level of supervisory discretion is retained.	Supervisors and resolution authorities have wide discretion. This may create uncertainty for the market players.
	Harmonisation is achieved to a certain extent through the specification of common factors.	A lack of consistency across jurisdictions may develop.
	The need to develop and test new practices is avoided.	Great variations may make cross-border cooperation less efficient and effective.
An exhaustive list of criteria with specific indicators together with weights for these indicators and upper threshold for the overall score (Option B)	Full convergence is achieved for supervisory and resolution activities across jurisdictions.	Supervisory discretion is mostly removed and authorities may be forced into a decision even in cases where they do not necessarily agree with the result having regard to institution-specific considerations.
	Clarity and transparency are provided to market participants as well as institutions regarding the eligibility of simplified obligations.	The list is not proactive and from a regulatory point of view it is hard to adjust the list to accommodate new challenges that may occur in the future.
	The indicators and criteria can be aligned with international practice and can be made consistent with the definition of systemically important banks.	Thresholds for the indicators/score could be considered new regulatory requirements by institutions.
A set of criteria together with indicators to define these criteria, with no specification of the methodology (Option C)	Balance between effective convergence and flexibility for discretionary judgement for the authorities.	Some discretion may create uncertainty for market participants.
	Proactive approach such that authorities can update their decision by including/removing additional indicators on an ad hoc basis.	Lack of consistency when handling the cases may occur.
	Alignment with international standards and consistency with the definition of systemically important banks.	

F. Preferred option

It is reasonable to conclude that Option B is very difficult to implement and that Option C inherits some of the disadvantages of Option A, but to a lesser extent. Given the potential costs and benefits of the technical options, Option C is the preferred option to address the identified problems.



4.2 Views of the Banking Stakeholder Group (BSG)

The BSG welcomed the approach proposed in the draft guidelines set out in EBA/CP/2014/25, including the adoption of existing supervisory processes into the guidelines, such as the requirement to consider the assessment of risks performed in accordance with SREP when assessing institutions against the criterion of risk profile.

The BSG commented that the information to be provided for the purposes of assessing institutions against the indicators set out in the draft guidelines (for the purposes of the criteria set out in Article 4(1) of the Directive) does not place a burden on smaller institutions.

The BSG commented on the scope of the draft guidelines, stating that the assessment of whether an institution should be eligible for simplified obligations and the simplified obligations themselves should apply to stand-alone institutions and not to institutions included in a group recovery or resolution plan.

4.3 Feedback on the public consultation and on the opinion of the BSG

The EBA publicly consulted on the draft guidelines.

The consultation period lasted for three months and ended on 3 January 2015. Eight responses were received, of which seven were published on the EBA website (one was a confidential response).

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 response to different questions. In such cases, the comments, and the EBA's analysis, are included in the section of this paper where the EBA considers them most appropriate.

Changes to the draft guidelines have been incorporated as a result of the responses received during the public consultation.

Summary of key issues and the EBA's responses

1. Respondents asked for clarification on the scope for the assessment of whether an institution is eligible for simplified obligations, noting that in the case of European groups the Directive requires recovery and resolution planning to take place at the group level and at the individual subsidiary level only where that has been explicitly agreed.

EBA response

The background section of the guidelines has been revised to take into account the wording in Article 4 of the Directive as well as Article 5 (Scope and obligations for recovery planning) and Article 10 (Scope and obligations for resolution planning).

2. Respondents had feedback with regard to specific indicators, especially in the case of investment firms.

EBA response

The guidelines have been revised to include an additional mandatory indicator for investment firms.

3. Respondents requested examples of situations where institutions would be eligible for simplified obligations.



EBA response

The guidelines do not provide examples of institutions that would meet the criteria for simplified obligations, as this would go beyond the mandate of the guidelines and is ultimately a matter for the judgement of the competent authorities and resolution authorities, having regard to the circumstances of each case.



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

Comments	Summary of responses received	EBA analysis	Amendments to the proposals
General comments			
Scope	<p>Respondents suggested that the guidelines define which institutions are eligible for simplified obligations and the nature of the simplified obligations that should be imposed in different cases.</p> <p>One respondent asked how a subsidiary of a G-SIFI which itself is not a G-SIFI would be treated.</p> <p>A respondent requested further clarification on waivers for an IPS pursuant to Article 4(8) of the Directive.</p>	<p>It is outside of the mandate of the guidelines (Article 4(5) of the Directive) to define categories of institutions that shall be eligible for simplified obligations. In addition, it is not possible for the EBA to set out recovery and resolution planning expectations for different categories of institution as this is a matter for the competent authorities and the resolution authorities to determine on a case by case basis pursuant to Article 4(1) of the Directive.</p> <p>The guidelines make clear that institutions designated as G-SIIs or O-SIIs should be subject to full obligations. As the competent authorities and resolution authorities should assess an institution against the criteria specified in Article 4(1) of the Directive it is relevant to consider that institution's status. For example, if an EU subsidiary of a third country G-SIFI is not designated as a G-SII (or O-SII) then the authorities may assess whether that institution is eligible for simplified obligations. Where the EU subsidiary is designated as a G-SII or O-SII then full obligations should apply.</p> <p>As the EBA noted in the background section to the consultation paper, only specified types of institutions may be waived from requirements relating to recovery and resolution planning (see</p>	<p>The 'General principles' section of the guidelines has been revised to help clarify the level of the assessment for eligibility for simplified obligations and the level of the application of simplified obligations.</p> <p>The 'General principles' section of the guidelines has also been updated to reflect the text in the background section to the consultation paper on the interaction between Article 4(8) and (10) of the Directive.</p>



Comments	Summary of responses received	EBA analysis	Amendments to the proposals
		Article 4(8) and (10) of the Directive). The EBA is content to reflect this text in the introductory section of the guidelines.	
Resolution objectives	A respondent suggested that the guidelines are clear that resolution objectives and the conditions for resolution set out in Articles 31 and 32 of the Directive can be met even if an institution meets the criteria for simplified obligations.	The guidelines specify the indicators to be taken into account when assessing institutions against the criteria specified in Article 4(1) of the Directive for the purposes of determining whether simplified obligations may be applied to an institution as regards recovery and resolution planning and resolvability assessments. The eligibility of an institution for simplified obligations does not pre-empt an assessment as to whether the conditions for resolution are satisfied (Article 32 of the Directive) and, if so, the action most appropriate having regard to the resolution objectives (Article 31 of the Directive) on a case by case basis.	The 'General principles' section of the guidelines has been revised to clarify the position.
Responses to questions in Consultation Paper EBA/CP/2014/25			
Question 1. Do you agree with the mandatory and optional indicators listed in the guidelines for the criteria?	<p>A respondent proposed that institutions with significant amounts of covered deposits are likely to be less complex in nature.</p> <p>'Respondents proposed that an institution should not be barred from qualifying for simplified obligations on the basis of certain criteria, such as shareholding structure and legal form, alone.</p> <p>A respondent suggested that the principle behind the indicator 'concentration of shareholders' (for the purposes of the 'shareholding structure' criterion) is not</p>	<p>The guidelines do not specify how competent authorities and resolution authorities should interpret the results of an assessment of an institution against the criteria set out in Article 4(1) of the Directive. Rather, the purpose of the guidelines is to ensure that the authorities use the same indicators when assessing institutions against the criteria specified in Article 4(1) of the Directive; the outcome of the assessment is a matter for the authority concerned.</p> <p>The use of each of the criteria is required pursuant</p>	<p>Additional wording related to the indicators on 'shareholding structure' and 'legal form' has been added to the 'General principles' section of the guidelines.</p> <p>The 'General</p>



Comments	Summary of responses received	EBA analysis	Amendments to the proposals
	<p>relevant for mutuals and cooperatives. Instead, indicators such as the presence and robustness of a solidarity mechanism would be more appropriate.</p> <p>A respondent suggested that the indicator of ‘IPS guarantee fund relative to an institution’s total funds’ is too narrow and leaves out other factors that should be taken into account when considering simplified obligations for an IPS, including the soundness of the monitoring system, the early intervention framework and the robustness of the enforcement powers on members.</p> <p>A respondent suggested that the proposed indicators are too focused on credit institutions and do not sufficiently take account of investment firms. That respondent proposed that certain indicators relevant to investment firms be added to the guidelines.</p> <p>Respondents also suggested that the guidelines clarify that the mandatory indicators which are not relevant to investment firms do not need to be considered when assessing whether the institution meets the criteria for simplified obligations.</p>	<p>to Article 4(1) of the Directive. Therefore the use of individual criterion does not of itself indicate whether an institution shall or shall not be eligible for simplified obligations. Rather, it is the outcome of the assessment of an institution against all of the criteria that determines eligibility for simplified obligations.</p> <p>As for IPSs, it is necessary to specify in the guidelines indicators which inform the assessment of the impact of an institution’s failure on financial markets, other institutions, funding conditions, and the wider economy. The soundness of monitoring systems, the availability of solidarity mechanisms, etc., would better inform an assessment of the probability of failure, rather than the impact of failure; therefore, these indicators have not been incorporated into the guidelines.</p> <p>The EBA agrees that the list of mandatory indicators should better incorporate indicators which are relevant to investment firms. The EBA has not, however, identified any mandatory indicators that would be irrelevant to investment firms in all cases. However, where it is not possible to apply indicators to an investment firm in light of its business activities this can be indicated on a case by case basis by the authority concerned.</p>	<p>principles’ section of the guidelines has also been revised to reflect the intent of Article 4 in relation to IPS waivers.</p> <p>Indicators relevant to investment firms have been added to the list of mandatory indicators set out in the guidelines.</p>
<p>Question 2. Do you consider the level of detail</p>	<p>Respondents suggested that the inclusion of more examples showing how the indicators should be applied</p>	<p>The guidelines do not provide examples of which institutions may meet the criteria for simplified</p>	<p>The ‘General principles’ section of</p>



Comments	Summary of responses received	EBA analysis	Amendments to the proposals
<p>in the guidelines appropriate?</p>	<p>would be helpful.</p> <p>A respondent suggested that the criterion of being designated as an O-SII be removed from the considerations to be taken into account when assessing whether an institution should be considered eligible for simplified obligations.</p>	<p>obligations because this is ultimately a matter for the judgement of the competent authorities and resolution authorities pursuant to Article 4(1) of the Directive.</p> <p>The Directive does not specify the nature of simplified obligations that may be applied. Article 4(1) of the Directive states that the competent authorities and resolution authorities should set the level and frequency of information required for various purposes based on the impact that that institution's failure and subsequent winding up under normal insolvency proceedings would be likely to have on financial markets, on other institutions, on funding conditions, and on the wider economy. This may differ on a national basis. The guidelines therefore allow for each authority to define the simplified obligations as they consider appropriate taking account of all relevant circumstances.</p> <p>The assessment related to the level of obligations which should apply for recovery and resolution plans should take place at the level of application of the recovery plan and resolution plan requirements. In some cases this will be at a group level and in other cases it will be at the subsidiary or stand-alone level in accordance with Article 5 of the Directive (for recovery plans) and Article 10 (for resolution plans).</p> <p>The text on G-SIIs and O-SIIs has been maintained because, on the basis of the application of the relevant methodology for identifying G-SIIs and</p>	<p>the guidelines has been updated to clarify that the level of the assessment for simplified obligations should take place where the obligation for recovery and resolution planning is set by the Directive.</p>



Comments	Summary of responses received	EBA analysis	Amendments to the proposals
		<p>O-SIIs, it is clear that their failure and subsequent winding up under normal insolvency proceedings would be likely to have a significant negative effect on financial markets, on other institutions, on funding conditions and on the wider economy.</p>	
<p>Question 3. Do you agree that the lists of mandatory and optional indicators are sufficient to take account of the full range of business models of investment firms?</p>	<p>Respondents suggested that the list of optional indicators should not be a closed list. Additional indicators are relevant for investment firms. In addition, emerging practice may result in the identification of additional indicators that may be appropriate.</p>	<p>It is important that a uniform approach is adopted across the Union with regard to the assessment of the eligibility of institutions for simplified obligations.</p> <p>The guidelines provide appropriate certainty and transparency to the industry on the factors that the competent authorities and resolution authorities will use to inform their decisions. The approach also facilitates cooperation among the authorities when conducting assessments relating to institutions with a cross-border presence.</p> <p>The combination of mandatory and optional indicators ensures that the assessment process will be conducted in a proportionate manner in line with the characteristics of the institution or category of institution under consideration.</p> <p>The list of optional indicators is two pages in length and is sufficiently detailed. Other than the indicators with regard to investment firms, the responses do not suggest that the EBA's proposed approach of a closed list of optional indicators is inappropriate as no other relevant indicators have been identified at this stage.</p> <p>The EBA does recognise, however, that practices</p>	<p>No amendments.</p>



Comments	Summary of responses received	EBA analysis	Amendments to the proposals
		<p>relating to recovery and resolution are evolving. The guidelines can be updated, if necessary, from time to time to take account of any other indicators which emerge as relevant to the process of assessing the eligibility of institutions for simplified obligations.</p>	

