EBA/RTS/2015/12

EBA/GL/2015/21

17 December 2015

Final Report

Draft Regulatory Technical Standards and Guidelines on business reorganisation plans under Directive 2014/59/EU (BRRD)

Contents

1. Executive Summary

The Bank Recovery and Resolution Directive (BRRD)[1] entrusts resolution authorities with a set of tools and powers to intervene in a non-viable institution. Where the resolution authority applies the bail-in tool to recapitalise an institution under resolution, the BRRD requires that the management body or the person or persons appointed to operate the institution draw up and submit to the resolution authority a business reorganisation plan that restores the institution's long-term viability. Twice annually the management body should submit a progress report. The business reorganisation plan is to be assessed by the resolution authority in agreement with the competent authority and it is to be approved by the resolution authority.

The BRRD mandates the European Banking Authority (EBA) to develop draft regulatory technical standards (RTS) on the content of the business reorganisation plan and the progress reports and issue guidelines on the assessment of the business reorganisation plan.

The draft RTS require a complete and prudent business reorganisation plan that identifies and addresses the causes of the institution's failure and sets out how the institution will be restored to long-term viability. The reorganisation strategy should be prudent and take into account the strengths and weaknesses of the institution, the relevant market and the macro-economic situation. The guidelines are addressed to both resolution authorities and competent authorities. The authorities should assess the credibility of the business reorganisation plan, the appropriateness of the strategy and its consistency with other public policy objectives and rules. The guidelines include provisions on the coordination between the resolution and competent authorities.

These draft RTS and guidelines are a significant step towards harmonisation and the establishment of a single rulebook for the functioning of the EU internal market in the field of supervision and resolution of financial institutions. They respect the principle of proportionality.

Next steps

The draft regulatory technical standards will be submitted to the Commission for endorsement, following which they will be subject to scrutiny by the European Parliament and the Council, before being published in the Official Journal of the European Union. The technical standards will apply 20 days after their publication in the Official Journal of the European Union.

The guidelines will be translated into the official EU languages and published on the EBA website. The deadline for resolution and competent authorities to report whether they comply with the guidelines will be 2 months after the publication of the translations. The guidelines will apply3 months after their translation in all EU official languages.

[1] Directive 2014/59/EU, OJ L 173/12.6.2014, p.190.

2. Background and rationale

Mandate

The resolution framework laid down in Directive 2014/59/EU (the Bank Recovery and Resolution Directive, BRRD)[2] entrusts the resolution authority with a set of tools and powers to intervene swiftly and at a sufficiently early stage in a non-viable entity, in order to ensure the continuity of the entity's critical functions while minimising the impact of its potential failure on the economy and the financial system. The BRRD provides a number of resolution tools, namely the sale of business tool, the bridge institution tool, the asset separation tool and the bail-in tool.

Where the resolution authority applies the bail-in tool to recapitalise an institution under resolution in accordance with point (a) of Article 43 (2) of Directive 2014/59/EU, the BRRD requires that the management body or the person or persons appointed to operate the bank[3] draw up and submit to the resolution authority a business reorganisation plan. The business reorganisation plan should set out the measures aiming to restore the long-term viability of the institution (Articles 51-52 of the BRRD). Twice annually the management body or the relevant person or persons should also submit a report to the resolution authority on the progress of implementation of the business reorganisation plan (progress report).

The business reorganisation plan is to be assessed by the resolution authority in agreement with the competent authority and it is to be approved by the resolution authority. In case of a group entity where the bail-in tool was applied to two or more group entities, the business reorganisation plan is to be prepared according to the BRRD provisions or recovery plans and their assessment (Articles 7 and 8) and the group-level resolution authority shall communicate it to other resolution authorities concerned.

The BRRD mandates the European Banking Authority (EBA) to develop and issue, by 3 January 2016:

- draft regulatory technical standards (RTS) on the minimum elements to be included in the business reorganisation plan and on the minimum content of the progress reports;
- guidelines on the minimum criteria for the assessment of the business reorganisation plan by the resolution authority, in agreement with the competent authority.

According to the BRRD, the EBA may also specify further in RTS the criteria for the assessment of the business reorganisation plan, taking into account the experience acquired in the application of the aforementioned guidelines. The preparation of these RTS will take place at a later stage and thus is not covered by this final report.

[2] Directive 2014/59/EU, OJ L 173/12.6.2014, p. 190.
[3] Article 72(1).

Approach

The draft RTS require a complete and prudent business reorganisation plan that addresses the causes of the institution's failure and sets out how it will be restored to long-term viability. The guidelines require the authorities to assess the credibility of the business reorganisation plan, the appropriateness of the strategy and its consistency with other public policy objectives and rules.

Restoring the long-term viability of the institution or entity following resolution means that, at the latest by the end of the reorganisation period, the institution or entity:

- is capable of fulfilling its internal capital adequacy assessment process, according to the relevant provisions of Directive 2013/36/EU (CRD IV);[4]

- fulfils all the relevant prudential and other regulatory requirements on a forward-looking basis, such as liquidity, regulatory capital adequacy and the minimum requirement for own funds and eligible liabilities (Article 45 BRRD);

- has a viable business model that is considered sustainable in the long term and does not threaten its capacity to fulfil the above two conditions, in line with the business model analysis framework and methodology provided in the guidelines on common procedures and methodologies for the supervisory review and evaluation process (SREP).[5]

The viability analysis should include a significant, albeit plausible, set of worst-case assumptions relating to the context in which the firm will operate (worst-case scenario). The business reorganisation plan should also ensure that the reorganisation measures do not pose a threat to financial stability, that they will not require further resolution in the foreseeable future and that they ensure the continuity of the institution or entity's critical functions.

Draft RTS on the content of the business reorganisation plan

The business reorganisation plan should identify and address the causes of the firm's failure and show that the institution can operate viably in the long term, by covering all its costs and providing an acceptable return. The business reorganisation plan should address any shortcomings in the institution's business model, even if not directly related to its failure, to the extent that they may have an impact on the institution's long-term viability. The reorganisation strategy should rely on prudent assumptions and should take into account the strengths and weaknesses of the institution, the relevant market and macro-economic situation.

The business reorganisation plan should include projections on the financial performance of the institution during the reorganisation period with relevant milestones and indicators. These indicators and milestones could be adjusted to a worst-case scenario, provided that long-term viability is restored within a reasonable timescale, although this may be longer than the period required under the base case.

[4] Directive 2013/36/EU, OJ L 176, 27.6.2013, p. 338.

[5] EBA/GL/2014/13, 19 December 2014.

The institution should regularly report on the implementation of the business reorganisation plan to the resolution authority through progress reports. These progress reports should include proposed adjustments to the business reorganisation plan.

Guidelines on the assessment criteria

The guidelines are addressed to both resolution authorities and competent authorities. The authorities should assess whether the business reorganisation plan relies on credible assumptions and concrete performance indicators that, if adhered to, will ensure the restoration of the institution's long-term viability. The authorities should also assess whether the business reorganisation plan follows a strategy that is realistic and appropriate, taking into account the opportunities and threats in the relevant market.

Finally, the authorities should ensure that the business reorganisation plan is consistent with other business plans prepared in parallel by the institution and that it respects other public policy objectives. Outside verification by independent parties (e.g. by an auditor or a management consultant) should be possible, if the resolution authority or the competent authority deems it necessary.

Guidelines – coordination between resolution and competent authorities

The BRRD provides that the resolution authority should decide in agreement with the competent authority for the assessment, approval and request for amendments of the business reorganisation plan. It is necessary to avoid a possible conflict between the resolution and the competent authorities or among multiple resolution or competent authorities responsible for different parts of the institution under reorganisation, while creating the conditions for an exchange of opinions. However, the BRRD does not include specific provisions on how the authorities should reach an agreement on their assessments.

For that purpose the EBA, in accordance with Article 16 of the Regulation (EU) No 1093/2010[6] (the EBA Regulation) and in order to fulfil its obligations under Article 31 of the EBA Regulation, has extended the scope of application of the guidelines to include provisions on the coordination between the resolution and competent authorities. The relevant section provides for the timely exchange of assessments on the business reorganisation plan and the potential need for amendments of revision when implemented. Any divergence of opinions should be addressed without delay by the authorities involved, in a spirit of cooperation and with a view to concluding on a common assessment. To that end, the EBA can play a non-binding mediation role, when necessary, in accordance with the powers granted to it by Article 31 of the EBA Regulation.

[6] 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 (the EBA Regulation).

Other relevant rules

The draft RTS and the guidelines have been developed taking into account the fact that other EU rules may apply to an institution under resolution following a bail-in. In particular, we have identified two sets of such rules: i) the BRRD requirement for recovery (Article 5 *et seq.*) and resolution planning (Article 10 *et seq.*); ii) the State aid rules and in particular the obligation for institutions, whose resolution relies on extraordinary public financial support or State aid (Articles 107 and 108 TFEU), to submit a restructuring plan, which should be approved by the European Commission. Of course state aid may not always be involved, in particular because resolution planning should not envisage any extraordinary public financial support (Article 16(1)(a) BRRD).

Contribution to BRRD and the single market

These draft RTS and guidelines aim to establish the requirement for quality business reorganisation plans that should be subject to thorough assessment. This is necessary in order to effectively address the reasons for the institution's failure and ensure that it will not need further resolution in the foreseeable future, therefore fulfilling the objectives of the BRRD.

These draft RTS and guidelines provide a harmonised framework for the content of the business reorganisation plan and the implementation reports as well as a coherent basis for their assessment. They are a significant step towards the establishment of a single rulebook for the functioning of the internal market in the field of supervision and resolution of financial institutions, in particular with regard to the application of the bail-in resolution tool, as provided by the BRRD.

Proportionality – nature of prescription

The draft RTS and the guidelines respect the principle of proportionality. Indeed, both refer only to institutions that have been subject to resolution, and have thus been considered as important for financial stability.

In addition, the principle is inherent in the requirements, since smaller or simpler institutions will comprise fewer business lines to analyse and their business reorganisation plan will require less consideration of the impact on the financial system. Each business reorganisation plan and its assessment should be tailored to the particular features of the institution under resolution. Experience shows that what is appropriate for a particular institution in a given market may not be appropriate for all. Thus, the draft RTS and the guidelines do not prescribe one common set of indicators, actions or thresholds to be met by every business reorganisation plan. In the same vein, the definition of certain terms, such as 'business line', '[financial] return' and 'profitability', is intentionally flexible to cater for smaller or simpler institutions.

Impact assessment

Given the common themes running across the RTS and the guidelines and the commonality of options facing the EBA for each proposed action, one impact assessment has been prepared for both the draft RTS and the guidelines.

3. Draft regulatory technical standards on the content of the business reorganisation plan and the progress reports

COMMISSION DELEGATED REGULATION (EU) …/..

of XXX

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

(Text with EEA relevance)

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,
Having regard to 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 Council7, and in particular Article 52(12)(a) and (b) thereof,

Whereas:

(1) It is essential to lay down detailed rules on the minimum elements that should be included in a business reorganisation plan for its approval and on the minimum contents of the reports drawn up in case of reorganisation of the institutions and entities subject to the provisions of Directive 2014/59/EU.

(2) The guidelines and communications adopted by the European Commission in relation to the assessment of compliance with the Union State aid framework relating to the restructuring of firms in difficulties in the financial sector, pursuant to Article 107(3) of the Treaty, may provide useful reference for the elaboration of the business reorganisation plan even where no State aid has been granted, since they share with the business reorganisation plan the objective of restoring the institution or entity's long-term viability.

7 OJ L 173/12.6.2014, p.190.

(3) The development of business reorganisation plans may draw information from the recovery plan and the resolution plan, to the extent that such information is still relevant to the restoration of the long-term viability of the institution or entity referred to in points (b), (c) and (d) of Article 1(1) of Directive 2014/59/EU and taking into account the circumstances after the application of the bail-in tool.

(4) The restructuring of the institution or entity referred to in points (b), (c) and (d) of Article 1(1) of Directive 2014/59/EU and its activities subsequent to the application of the bail-in tool should address the reasons for its failure. The basis for the reorganisation strategy should therefore be the factors that caused the entry of any institution or entity into resolution. That strategy may also take into account the crisis prevention and management measures that have been taken and implemented by the competent authority or the resolution authority respectively. The source and extent of the difficulties encountered by such institution or entity may be illustrated by including information on the fulfilment of the relevant regulatory and prudential requirements prior to resolution.

(5) Although the failure of the institution or entity referred to in points (b), (c) and (d) of Article 1(1) of Directive 2014/59/EU may have been caused by a particular set of reasons, such institution or entity may have suffered from other shortcomings which did not trigger the failure, but could undermine its long-term viability. The reorganisation should address any shortcomings. A successful reorganisation strategy should follow a comprehensive analysis of both the institution or entity under reorganisation, its strengths and weaknesses, as well as the relevant markets where that institution or entity operates and the risks and opportunities that they present. In order for a business reorganisation plan to be considered credible by the resolution authority and the competent authority, it should restore the institution's long term viability based on prudent assumptions.

(6) Restoring the long-term viability of the institution or entity referred to in points (b), (c) and (d) of Article 1(1) of Directive 2014/59/EU following resolution means that, at the latest by the end of the reorganisation period, the institution or entity is capable of fulfilling its internal capital adequacy assessment process, and all the relevant prudential and other regulatory requirements on a forward-looking basis, and that it has a viable business model that is also sustainable in the long-term

(7) The resolution authority and the competent authority should be provided with sufficiently detailed information to assess the business reorganisation plan and monitor its implementation. The requirement to provide such information should take into account its relevance for the corporate structure of the institution or entity referred to in points (b), (c) and (d) of Article 1(1) of Directive 2014/59/EU, and its relevance for the reorganisation and its reliability, especially in the case of a systemic crisis.

(8) Fluctuations are an inherent part of the economic cycle. Any business plan should therefore be subject to analyses of alternative scenarios, with appropriate changes in the key underlying assumptions. Although long-term viability should be restored under any scenario, the development of full alternative reorganisation strategies would incur disproportionate costs for the institution or entity referred to in points (b), (c) and (d) of Article 1(1) of Directive 2014/59/EU, while alternative scenarios should in principle be less likely to occur than the base-case scenario.

(9) The business reorganisation plan should allow the resolution authority and the competent authority to assess its impact on achieving the resolution objectives, and in

particular ensuring continuity of critical functions and avoiding a significant adverse effect on the financial system.

(10) The frequency and detail of the monitoring of the implementation of the business reorganisation plan should allow early identification of any deviations or other difficulties. Quarterly reporting of data and performance is a common methodology in the financial sector and allows such timely observation. The business reorganisation plan should also allow for adjustments to the milestones or measures originally envisaged therein, when justified by the circumstances.

(11) This Regulation is based on the draft regulatory technical standards submitted by the European Banking Authority ('EBA') to the Commission.

(12) The EBA has conducted open public consultations on the draft regulatory technical standards on which this Regulation is based, analysed the potential related costs and benefits and requested the opinion of the Banking Stakeholder Group established in accordance with Article 15(1) of Regulation (EU) No 1093/2010 of the European Parliament and of the Council[8].

HAS ADOPTED THIS REGULATION:

Article 1
Definitions

For the purposes of this Regulation, the following definitions apply:

1. 'Reorganisation period' means the period of reasonable timescale between the application of the bail-in tool and the moment when the institution or entity referred to in points (b), (c) and (d) of Article 1(1) of Directive 2014/59/EU under resolution is expected to have restored its long-term viability, during which measures included in the business reorganisation plan are implemented.

2. 'Base case' means the business scenario, which the management body or the person or persons appointed to operate the institution or entity referred to in points (b), (c) and (d) of Article 1(1) of Directive 2014/59/EU consider as most likely to materialise in the process of restoring the long-term viability of the institution or entity;

Article 2
Strategy and measures

1. The business reorganisation plan shall include all of the following:

   (a) a historic and financial account of the factors that contributed to the difficulties of the institution or entity referred to in points (b), (c) and (d) of Article 1(1) of Directive 2014/59/EU including the relevant performance indicators that deteriorated in the period preceding the resolution and the reason for their deterioration;

   (b) a short description of crisis prevention and crisis management measures, where such measures have been applied by the competent authority, the resolution

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

authority or the institution or entity referred to in points (b), (c) and (d) of Article 1(1) of Directive 2014/59/EU before the submission of the business reorganisation plan;

(c) a description of the business reorganisation strategy and the measures intended to restore the long-term viability of the institution or entity during the reorganisation period including a description of each of the following:

(1) the reorganised business model;

(2) the measures implementing the business reorganisation strategy at group, entity and business line level;

(3) the target duration of the reorganisation period and important milestones;

(4) the interaction with the resolution authority and the competent authority;

(5) the strategy regarding the involvement of relevant external stakeholders such as labour unions or organisations;

(6) the internal and external communication strategy for the business reorganisation measures.

2. Where parts of the institution or entity referred to in points (b), (c) and (d) of Article 1(1) of Directive 2014/59/EU are to be wound down or sold, the reorganisation strategy shall identify all of the following:

(a) the relevant entity or business line, the method for the winding down or sale, including the underlying assumptions and any possible expected losses;

(b) the expected timescale;

(c) any financing or services provided by or to the remaining institution or entity.

3. Any proceeds from the divestment of assets, entities or business lines envisaged by the business reorganisation plan shall be calculated prudently and with reference either to a reliable benchmark or valuation, such as an expert valuation, a market sounding exercise or the value of similar business lines or entities. The calculation shall take into account the likelihood of loss realisation.

4. For the parts of the institution or entity referred to in points (b), (c) and (d) of Article 1(1) of Directive 2014/59/EU that will not be wound down or sold, the business reorganisation plan shall indicate ways to remedy any shortcomings in their operation or performance that may have an impact on their long-term viability, even if these shortcomings are not directly related to the failure of the institution or entity.

5. The measures set out in the business reorganisation plan shall take into account the strengths and weaknesses of the institution or entity referred to in points (b), (c) and (d) of Article 1(1) of Directive 2014/59/EU and its reorganised business model by reference to the economic and market environment in which it operates.

6. The reorganisation strategy may include measures previously identified in the recovery plan or in the resolution plan, provided the latter is accessible to the institution or entity referred to in points (b), (c) and (d) of Article 1(1) of Directive

2014/59/EU and when such measures remain valid following resolution. This option does not imply any obligation on the resolution authority to share the resolution plan with the management body or with the person or persons appointed in accordance with Article 72(1) of Directive 2014/59/EU.

Article 3
Financial performance – Regulatory requirements

1. The business reorganisation plan shall include the projected financial performance of the institution or entity referred to in points (b), (c) and (d) of Article 1(1) of Directive 2014/59/EU during the reorganisation period and show the restoration of the long-term viability. It shall set out in particular:

   (a) the costs and the impact of the reorganisation on the profit and loss statement and the balance sheet of the institution or entity;

   (b) a description of the funding requirements during the reorganisation period and potential sources of funding;

   (c) the way the institution or entity will be able to operate covering all its costs, including depreciation and financial charges and provide an acceptable financial return by the end of the reorganisation period;

   (d) a post-resolution balance sheet reflecting the new debt and capital structure and the write down of assets based on the valuation conducted pursuant to Article 36(1) of Directive 2014/59/EU or the definitive valuation under Article 36(10) thereof;

   (e) a projection of the key financial metrics at group, entity and business line level, relating to, in particular, liquidity, loan performance, funding profile, profitability and efficiency.

2. The business reorganisation plan shall set out the actions the institution or entity will take to ensure that it is able to fulfil all the applicable prudential and other regulatory requirements on a forward-looking basis as quickly as possible and at the latest by the end of the reorganisation period, including the minimum requirement for own funds and eligible liabilities within the meaning of Article 45 of Directive 2014/59/EU.

Article 4
Viability assessment

1. The business reorganisation plan shall contain sufficient information to allow the resolution authority and the competent authority to assess the feasibility of the proposed measures. The business reorganisation plan shall set out at least:

   (a) the assumptions regarding the expected macro-economic and market developments in the base case, compared with appropriate sector-wide benchmarks;

   (b) a concise presentation of alternative reorganisation strategies or set of measures and justification as to why the business reorganisation plan's measures have

been chosen to restore long-term viability of the institution or entity referred to in points (b), (c) and (d) of Article 1(1) of Directive 2014/59/EU, while respecting the resolution objectives and principles;

2. The business reorganisation plan shall provide information to support the resolution authority and the competent authority in their analysis of the reorganisation's impact on the critical functions of institution or entity referred to in points (b), (c) and (d) of Article 1(1) of Directive 2014/59/EU and on financial stability.

3. The business reorganisation plan shall include an analysis of alternative set of key underlying assumptions, in which best-case and worst-case scenarios are considered. Restoration of long-term viability shall be possible under all scenarios, although the period, the measures and the financial performance may differ.

4. For the best-case and worst-case scenarios, the business reorganisation plan shall include a summary of the key information used in developing each scenario and the performance of the institution or entity referred to in points (b), (c) and (d) of Article 1(1) of Directive 2014/59/EU under each scenario. Such summary shall include in particular:

   (a) the underlying assumptions, such as key macro-economic variables;

   (b) the projection of the profit and loss statement and the balance sheet;

   (c) the key financial metrics at group, entity and business line level.

Article 5
Implementation and adjustments

1. The business reorganisation plan shall include specific, appropriate and at least quarterly implementation milestones and performance indicators. These milestones and indicators may be adjusted, in line with the process identified in the following paragraph.

2. The business reorganisation plan shall provide for the possibility for the management body or any person or persons appointed in accordance with Article 72(1) of Directive 2014/59/EU to reconsider the reorganisation strategy or individual measures where their implementation is no longer expected to contribute to the restoration of the long-term viability within the contemplated timescale. Such adjustments shall be communicated to the resolution authority and the competent authority through the progress report on the implementation of the business reorganisation plan. Where necessary for reasons of urgency, such adjustments may also be communicated through extraordinary reports.

3. The management body or the person or persons appointed in accordance with Article 72(1) of Directive 2014/59/EU shall not deviate from the implementation of the business reorganisation plan before obtaining approval for the adjustments according to the procedure set out in Article 52(7), (8) and (9) of Directive 2014/59/EU.

Article 6
Progress report

1. The progress report to be submitted to the resolution authority pursuant to Article 52(10) of Directive 2014/59/EU shall include a review and assessment of the

progress of the implementation of business reorganisation plan, covering at least the following:

(a) the milestones that are met, the measures that are realised and how their impact compares to that envisaged by the business reorganisation plan;

(b) the performance of the institution or entity and a comparison with the forecasts of the business reorganisation plan and previous progress reports;

(c) the reasons why any milestones or performance indicators have not been achieved and proposals to remedy the delays or shortfalls;

(d) any other issues arising in the execution of the business reorganisation plan that may prevent the restoration of the long-term viability of the institution or entity referred to in points (b), (c) and (d) of Article 1(1) of Directive 2014/59/EU;

(e) the upcoming measures and milestones and an assessment of how likely they are to be met;

(f) updated financial performance projections;

(g) where necessary and justified, a proposal for adjustments to individual measures, milestones or performance indicators, in accordance with the provisions of Article 5(2).

2. Resolution authorities may at all times require the management body or the person or persons appointed in accordance with Article 72(1) of Directive 2014/59/EU to provide any information relating to the implementation of the business reorganisation plan.

Article 7
Entry into force

This Regulation shall enter into force on the twentieth day following that of its publication in the Official Journal of the European Union.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels,

For the Commission
The President
On behalf of the President

4. Guidelines on the minimum criteria to be fulfilled by a business reorganisation plan

EBA/GL/2015/21

DD Month YYYY

Guidelines on the minimum criteria to be fulfilled by a business reorganisation plan

1. Compliance and reporting obligations

Status of these guidelines

1. This document contains guidelines issued pursuant to Article 16 of Regulation (EU) No 1093/2010.[9] In accordance with Article 16(3) of the EBA Regulation, competent authorities and financial institutions or entities must make every effort to comply with the guidelines.

2. Guidelines set out the EBA's 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.

[9] 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).

Reporting Requirements

3. Pursuant to Article 16(3) of the EBA Regulation, the competent authorities and resolution 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 dd.mm.yyyy. In the absence of any notification by this deadline, such competent authorities and resolution authorities will be considered by the EBA to be non-compliant. Notifications should be sent by submitting the relevant form to compliance@eba.europa.eu with the reference 'EBA/GL/2015/21'. Notifications should be submitted by persons with appropriate authority to report compliance on behalf of their competent authorities and resolution authorities.

4. Notifications will be published on the EBA website, in line with Article 16(3).

Title I – Subject matter, scope and definitions

1. Subject matter

These guidelines specify the minimum criteria that a business reorganisation plan is to fulfil for approval by the resolution authority pursuant to Article 52(7) of Directive 2014/59/EU.

2. Addressees

These guidelines are addressed to resolution authorities and competent authorities.

3. Definitions

3.1 'Base case' has the meaning set out in [Article 1(4) of the EBA/RTS/2015/12].

3.2 'Reorganisation period' has the meaning set out in [Article 1(3) of the EBA/RTS/2015/12].

3.3 'Restructuring plan' means a plan submitted by the institution or entity in relation to the provision of State aid in accordance with Articles 107 and 108 of the TFEU.

Title II – Specification of minimum criteria for the assessment of the business reorganisation plan

For the purposes of the approval of the business reorganisation plan pursuant to Article 52(7), the resolution authority and the competent authority should assess the business reorganisation plan at least against the minimum criteria set out in paragraphs (2) to (5) of this Title II.

1. Awareness and commitment

The business reorganisation plan should show that the management body or the person or persons appointed in accordance with Article 72(1) of Directive 2014/59/EU of the institution or entity referred to in points (b), (c) and (d) of Article 1(1) of Directive 2014/59/EU:

1. support the business reorganisation plan and commit to implement it;

2. have appointed one or more departments responsible for carrying out the business reorganisation plan and have identified the individual(s) assigned to senior management role(s) of such department(s).

3. have sought the cooperation and support of key internal and external stakeholders to the business reorganisation plan, such as:

3.1. the Board of Directors and the executive committee of the institution or entity referred to in points (b), (c) and (d) of Article 1(1) of Directive 2014/59/EU, who shall be ultimately responsible for the reorganisation strategy;

3.2. the competent authorities and resolution authorities outside the EU that may be responsible for parts of such institution or entity.

2. Credibility

2.1 The business reorganisation plan should demonstrate with a high level of confidence that its application will restore the long-term viability of the institution or entity referred to in points (b), (c) and (d) of Article 1(1) of Directive 2014/59/EU. Such demonstration should rely on credible assumptions, a scenario-based analysis and appropriate and concrete performance indicators capturing the performance of the entire group, the entities and the business lines that are not to be wound down or sold.

2.2 Any assumptions and performance indicators should be compared with appropriate sector-wide benchmarks and should be in line with available macro-economic forecasts.

2.3 Where the business reorganisation plan sets out a description of how the institution or entity referred to in points (b), (c) and (d) of Article 1(1) of Directive 2014/59/EU will be able to provide an acceptable financial return, such return should be assessed by comparison to relevant peer institutions or entities and historical data.

2.4 The risks taken into account by the viability analysis in the business reorganisation plan should be consistent with institution-specific and broader risks identified by the competent authority, the central bank or other relevant authority or institution in the relevant markets.

2.5 The worst-case scenario should reflect a significant, albeit plausible, change in the underlying assumptions in comparison to the base-case scenario. These changes should focus in particular on the assumptions that are more relevant for the institution under reorganisation.

2.6 Restoration of the long-term viability, even under the worst-case scenario, should not involve further application of resolution tools beyond the scope of the resolution scheme under implementation when the business reorganisation plan was drawn up. The resolution authority should also ensure that the reorganisation of the institution or entity does not give rise to any material impediments to resolvability. If such material impediments are identified, the resolution authority should notify the institution or entity referred to in points (b), (c) and (d) of Article 1(1) of Directive 2014/59/EU according to the procedure set out in Article 52(8) of Directive 2014/59/EU and outline relevant actions for how those impediments could be addressed.

2.7 The business reorganisation plan should demonstrate that the institution or entity referred to in points (b), (c) and (d) of Article 1(1) of Directive 2014/59/EU is capable of

fulfilling its internal capital adequacy assessment process in accordance with the relevant provisions of Directive 2013/36/EU.[10]

2.8 In order to determine whether the business reorganisation plan is reasonably likely to restore the long-term viability of the institution or entity referred to in points (b), (c) and (d) of Article 1(1) of Directive 2014/59/EU, both authorities should assess the business reorganisation plan using the relevant provisions of the business model analysis framework and methodology, as provided in the EBA guidelines on common procedures and methodologies for the supervisory review and evaluation process (SREP)[11]. In this respect the resolution authority should not be expected to use such EBA guidelines beyond what can be assumed by its experience and competence.

3. Appropriateness of the reorganisation strategy and measures

3.1 The information provided in the business reorganisation plan and its underlying assumptions regarding the causes that have triggered the resolution and the reorganisation strategy should be consistent with the assessment carried out by the resolution authority and the competent authority and the valuation that informed the determination of whether the conditions for resolution were met in accordance with Article 36(4)(a) of Directive 2014/59/EU.

3.2 Any analysis of the external operating environment included in the business reorganisation plan should be consistent with the analysis of opportunities and threats in the relevant markets, as determined by the resolution authority and competent authority when carrying out their tasks.

3.3 The business reorganisation plan should be feasible and realistic. In particular:

3.3.1 any internal and governance measures should be carried out taking into account potential implementation impediments, such as labour law or other contractual requirements;

3.3.2 the reorganisation strategy, measures, milestones and performance indicators contained in the business reorganisation plan should take into account the interdependencies between the legal entities and business lines in the group. These might include commercial, funding and operational interdependencies;

3.3.3 the reorganisation strategy, the individual measures, the milestones and the performance indicators contained in the business reorganisation plan should take into account the situation in the relevant markets;

[10] Directive 2013/36/EU, OJ L 176, 27.6.2013, p. 338.

[11] EBA/GL/2014/13, 19 December 2014.

3.3.4 any divestment of assets, entities or business lines envisaged by the business reorganisation plan should be tailored to the situation in the relevant markets. The timing and scope of such divestments should also take into account the interest and possibility of investors acquiring them;

3.3.5 the benchmark or valuation used to calculate any expected proceeds from divestment of assets, entities or business lines envisaged by the business reorganisation plan should be prudent, reliable and realistic.

3.4 The reorganisation period should be as short as possible, taking into account:

3.4.1 the need to allow sufficient time to implement the reorganisation strategy and measures in the most effective way, in order to restore long-term viability;

3.4.2 standards and practice in the relevant markets;

3.4.3 the need to maintain financial stability.

4. Consistency

4.1 The business reorganisation plan should be consistent with any business plans that have been prepared by the institution or entity and submitted to any other authority (e.g. competition or securities and markets authorities) following regulatory or legal obligations.

4.2 Where the Union State aid framework is applicable, the resolution authority and the competent authority, when assessing the business reorganisation plan, should cooperate with the European Commission on the assessment and viability analysis, which is an objective of both the business reorganisation plan and the restructuring plan.

4.3 Where the business reorganisation plan includes measures already featuring in the latest versions of previously prepared recovery or resolution plans for the institution or entity referred to in points (b), (c) and (d) of Article 1(1) of Directive 2014/59/EU, these should be limited to elements which remain relevant following that institution's or entity's failure and resolution and the situation in the relevant markets.

4.4 The reorganisation strategy should not undermine the resolution objectives and principles laid down in Articles 31 and 34 of Directive 2014/59/EU, as applied by the resolution authority. The resolution authority and the competent authority should satisfy themselves that implementation of the reorganisation strategy and measures do not adversely affect the critical functions of the institution or entity referred to in points (b), (c) and (d) of Article 1(1) of Directive 2014/59/EU, the functioning of the financial system and overall financial stability.

5. Monitoring and verification

5.1 Any milestones and performance indicators contained in the business reorganisation plan should be sufficiently concrete to enable their monitoring, in accordance with the reporting obligations referred to in Article 52(10) of Directive 2014/59/EU.

5.2 The content of the business reorganisation plan and the progress report should allow the resolution authority and the competent authority to conclude that the business reorganisation plan is implemented correctly and will achieve its objectives.

5.3 The resolution authority and the competent authority should ensure adequate arrangements in order to carry out the monitoring, in particular in relation to the timely flow of information regarding the implementation of the business reorganisation plan.

5.4 Where the resolution authority or the competent authority appoints an independent expert to verify in full or in part the assumptions and the effect of the measures contemplated by the business reorganisation plan, such independent expert should meet a standard of independence equivalent to the criteria for independence specified by Part Five, Title I of the Commission Delegated Regulation [XXX/XXX] supplementing Directive 2014/59/EU (Independence of valuers).

Title III – Coordination

1. Coordination between resolution and competent authorities

1.1 The resolution authority and the competent authority should establish appropriate working arrangements for the submission, assessment and approval of business reorganisation plans.

1.2 The indicative timeline of the envisaged actions should provide enough time for each authority to assess the business reorganisation plan after its submission, but also allow sufficient time for each authority to express any concern, to examine the concerns raised by the other authority and agree on the appropriate action, taking into account the deadlines provided in Article 52(7) to (10) of Directive 2014/59/EU.

1.3 Both the resolution and the competent authorities should coordinate communication and, when possible, submit one joint reply to the institution or entity referred to in points (b), (c) and (d) of Article 1(1) of Directive 2014/59/EU. Such communication should allow for the possibility for improvements by that institution or entity, in line with the procedure identified in Article 52(7) to (10) of Directive 2014/59/EU.

1.4 The competent authority should provide its agreement to the approval of the business reorganisation plan by the resolution authority in writing.

1.5 The resolution authority should share with the competent authority all the progress reports submitted to it by the management body or the person or persons appointed in accordance with Article 72(1) of Directive 2014/59/EU without undue delay.

1.6 Following each submission of the progress report, the resolution and the competent authorities should establish working arrangements to coordinate and share their assessment and communication to the progress report. Such arrangements should provide time for each authority to assess the progress report, but also allow sufficient time for each authority to express any concerns to the other authority and for the latter to examine such concerns and agree on the appropriate action.

1.7 When a disagreement between the two authorities cannot be resolved within the timeline established by Article 52(7) of Directive 2014/59/EU, either of the authorities may refer the issue to the EBA in order for the EBA to assist the authorities to reach an agreement in accordance with Article 31 of the EBA Regulation.

2. Coordination between resolution authorities and between competent authorities

2.1 Where the institutions or entities referred to in points (b), (c) and (d) of Article 1(1) of Directive 2014/59/EU under resolution have activities in more than one Member State or in jurisdictions outside the EU, the relevant resolution authority, before approving the business reorganisation plan, but within the appropriate timeframe for the assessment, should:

2.1.1 communicate the business reorganisation plan to the other resolution authorities affected by the reorganisation, in accordance with the provisions of Article 52(2) of Directive 2014/59/EU, even if they are in jurisdictions outside the EU, in accordance with existing cooperation arrangements or with existing assessments of confidentiality equivalence;

2.1.2 consider communicating the business reorganisation plan to that institution or entity's resolution college or European resolution college;

2.1.3 provide the resolution authorities referred to in points 2.1.1 and 2.1.2 above with the opportunity to comment on the business reorganisation plan and take their comments into account, to the extent possible.

2.2 Where the institutions or entities referred to in points (b), (c) and (d) of Article 1(1) of Directive 2014/59/EU under resolution have activities in more than one Member State or jurisdictions outside the EU, the relevant competent authority, before communicating its approval on the business reorganisation plan to the resolution authority, but within the appropriate timeframe for the assessment, should:

2.2.1 communicate the business reorganisation plan to the other competent authorities affected by the reorganisation in accordance with the provisions of Article 52(2) of Directive 2014/59/EU, even if they are in jurisdictions outside the EU, in accordance with existing cooperation arrangements or with existing assessments of confidentiality equivalence;

2.2.2 consider communicating the business reorganisation plan to the other members of that institution's or entity's college of supervisors;

2.2.3 provide the competent authorities referred to in points 2.2.1 and 2.2.2 above with the opportunity to comment on the business reorganisation plan and take their comments into account, to the extent possible.

2.3 When the bail-in tool is applied to two or more group entities in different Member States, the relevant resolution authorities and competent authorities should cooperate in the assessment and approval of the business reorganisation plan.

Title IV – Date of application

1. These guidelines apply from [3 months after translation of the guidelines in all EU official languages].

5. Accompanying documents

Cost–benefit analysis/impact assessment of RTS and the guidelines on business reorganisation plans

Introduction

Article 10(1) of the EBA Regulation provides that when any regulatory technical standards developed by the EBA are submitted to the Commission for adoption, they should be accompanied by an analysis of 'the potential related costs and benefits'. This analysis should provide an overview of the findings regarding the problem to be dealt with, the solutions proposed and the potential impact of these options.

Pursuant to Article 52 of the BRRD, the EBA is required to develop 1) regulatory technical standards (RTS) on the minimum elements to be included in the business reorganisation plan (business reorganisation plan) and in the implementation reports and 2) guidelines on the minimum criteria that the business reorganisation plan should fulfil, in order to be approved.

As per Articles 10 (1) and 16(2) of the EBA regulation, any draft RTS and guidelines developed by the EBA shall be accompanied by a cost–benefit analysis. Such annex shall provide the reader with an overview of the findings as regards the problem identification, the options identified to remove the problem and their potential impacts.

This annex presents the assessment of the policy options considered in both the guidelines and the RTS.[12]

Policy background and problem identification

Following a resolution, the implementation of the bail-in tool alone does not suffice for the restoration of the institution's long-term viability and its return in the market, because the bail-in tool is mainly improving the capital base of the institution or entity. It is thus necessary that institutions or entities subjected to bail-in take additional structural measures, in order to restore their long-term viability.

To ensure that institutions or entities adopt the adequate measures aiming to restore their long-term viability, Articles 51 and 52 of the BRRD require the management or the body exercising resolution power to develop a business reorganisation plan.

[12] Given the close link between the topics covered by the RTS and the guidelines, a single IA is covering the two types of deliverable.

The BRRD does not include a similar requirement for the application of other resolution tools. However, the economic effect of the bail-in tool could be mimicked by the bridge institution tool. For that tool, the BRRD requires the resolution authority to approve the strategy and risk profile of the bridge institution (Article 41(1)(d) of the BRRD).

As a general principle, any new requirement should be in line with existing requirements of other EU law provisions, to the extent possible, when addressing similar objectives or when there are overlapping assessments.

Baseline

Forward-looking plans aiming to reorganise an institution's or entity's business already exist in most EU jurisdictions. They apply as a general business practice when an institution or entity is subject to changes in its operation similar to those of a resolution, in particular a bail-in. In addition, under State aid rules (Articles 107 and 108 of the Treaty on the Functioning of the European Union), an institution or entity which is subject to restructuring, resolution or liquidation involving State aid is required to submit a restructuring plan, which should restore the institution's or entity's long-term viability, with the minimum cost for the State, and mitigate the distortions of competition stemming from the State aid.

However, 1) the existing practices are not designed for resolution purposes, 2) there is no common EU framework specifying the minimum content of the plan and the validation rules and, 3) when using the bridge institution resolution tool, one of the possible outcomes is the sale of the bridge institution. In this case, this outcome would be ensured if the bridge institution's activity is based on a sound business plan and is viable in the long term. Finally, in most EU institutions or entities the implementation of the business reorganisation plan for resolution purposes would lead to additional administrative costs, as the framework would be completely new.

Objectives

The RTS and the guidelines aim to provide clear guidance to institutions or entities, resolution authorities and competent authorities when setting up and agreeing on the content of the business reorganisation plan. The global objectives are to:

- enable institutions or entities subjected to bail-in to develop a realistic, credible and efficient strategy to restore their long-term viability and to preserve the parts of the businesses that are not wound down;
- restore market confidence in the ability of the bailed-in institution or entity to carry on business;
- avoid repeated recourse to resolution;
- establish common rules for the drafting and the assessment of the business reorganisation plan in order to ensure a level playing field across EU jurisdictions.

More specifically, the RTS and the guidelines also aim to:

- be consistent with other EU rules especially as regards State aid rules and other relevant BRRD requirements;
- avoid undue administrative burden for institutions or entities and resolution authorities and competent authorities;
- ensure maximum harmonisation while allowing adequate flexibility to enable institution-specific considerations when appropriate.

Policy options

While drafting the present regulation the EBA considered several policy options under five main areas:

1) Relation between the business reorganisation plan and the recovery and resolution plans

The BRRD requires all institutions or entities to draw up a recovery plan (Article 5 *et seq.*) and a resolution plan (Article 10 *et seq.*). While each plan has different objectives, there may be some elements of the recovery and resolution plans that may be relevant for the business reorganisation plan.

Indeed, the recovery plan, which is prepared *ex ante* by each institution or entity, provides measures to restore the institution's or entity's long-term viability following a significant deterioration of its financial situation. It includes a strategic analysis of the core business lines and of the critical functions as well as an assessment of the legal and financial structures of the institution or entity, including the interconnectedness with other entities. The resolution plan, prepared also *ex ante* by the resolution authority, demonstrates the resolution actions that the resolution authority may take where the institution or entity meets the conditions for resolution. The resolution plan also includes, among other things, a demonstration of how critical functions and core business lines could be separated, measures required to address or remove impediments to resolvability and a description of essential operations and systems for maintaining the continuous functioning of the institution's or entity's operational processes. In addition, both plans are required to consider potential impediments to business reorganisation.[13]

Given the potential overlaps between the recovery and the resolution plans and the business reorganisation plan, as well as the risk of inconsistency across the institution's or entity's plans, the EBA analysed the extent to which the content of the recovery and resolution plans could be reflected by the business reorganisation plan. Three options have been considered:

- Option 1.1: Full alignment of the business reorganisation plan with the content of the recovery and resolution plans.

[13] See Draft Regulatory Technical Standards on the content of resolution plans and the assessment of resolvability, Article 7(2).

- Option 1.2: Only use in the business reorganisation plan the relevant information of the recovery and resolution plans.
- Option 1.3: Develop a stand-alone business reorganisation plan with no reference to the recovery and resolution plans.

2) Interaction with the restructuring plan for State aid

Article 52(1) of the BRRD requires that, where State aid rules are applicable, the business reorganisation plan must be compatible with the requirement stated in the restructuring plan, which aims to restore the institution's or entity's long-term viability at minimum cost to the State and which also aims to mitigate potential distortions to competition.

While the restructuring plan may not be applicable to all institutions or entities subject to resolution, and although it addresses different policy objectives, it can nevertheless provide inspiration for the business reorganisation plan, as it includes forward-looking elements on the institution's or entity's business plan and shares with the business reorganisation plan the objective of restoring the institution's or entity's long-term viability.

In addition, similar to the options mentioned above, the EBA analysed the extent to which the requirements for the restructuring plan should be reflected in the business reorganisation plan. Three options have been considered:

- Option 2.1: Full alignment of the business reorganisation plan with the restructuring plan rules, regardless of whether or not the institution's or entity's resolution relies on State aid.
- Option 2.2: Alignment with relevant information of the restructuring plan only when the institution's or entity's resolution relies on State aid; cooperation with the European Commission where State aid is involved.
- Option 2.3: Development of a stand-alone business reorganisation plan with no reference to the restructuring plan.

3) Specification of the worst-case scenario

Article 52(4) of the BRRD specifies that the business reorganisation plan *'shall take account, inter alia, of the current state and future prospects of the financial markets, reflecting best case and worst case assumptions including a combination of events allowing the identification of the institution's main vulnerabilities.*'

The EBA considered three alternative options regarding the definition of the worst-case scenario:

- Option 3.1: Full stress testing.

- Option 3.2: Sensitivity analysis based on a significant, albeit plausible, change in the key underlying assumptions in comparison with the base-case scenario.[14]
- Option 3.3: No specification.

4) Business reorganisation plan requirement, when applying other resolution tools

It is necessary to avoid the possibility that the application of a resolution tool other than the bail-in would result in an institution or entity that is not viable in the long term. That could be the case for the bridge institution tool, as it provides for the establishment of a new institution with the potential outcome of selling the entire bridge institution or part of it. In this case, this outcome would be ensured if the bridge institution's activity is based on a sound business plan and is viable in the long term.

The EBA, in light of its powers in accordance with the EBA Regulation, considered three alternative options regarding the risk of circumvention of the business reorganisation plan requirement,:

- Option 4.1: Completely new the guidelines.
- Option 4.2: Extend the scope of the guidelines on the business reorganisation plan for only those requirements of the RTS and the guidelines that would be relevant for the approval of the strategy and risk profile of the bridge institution.
- Option 4.3: No specification of additional requirements.

5) Coordination between the resolution and competent authorities when assessing the business reorganisation plan and the progress report

The authorities, when assessing the business reorganisation plan and the progress report, may not always reach the same conclusions regarding the business reorganisation plan's assessment of the need for amendments or revision. Such disagreement may lead to contradictory messages and uncertainty as to the fate of the institution under resolution. However, the BRRD does not include specific provisions on how the authorities should reach an agreement on their assessments. Nonetheless, it is necessary to avoid a prolonged conflict between the resolution and the competent authorities, while creating the conditions for an exchange of opinions.

The EBA considered two alternative options in order to coordinate the actions and contacts between the resolution and competent authorities,:

- Option 5.1: Extend the scope of the guidelines to include provisions for the coordination of the actions and contacts between the authorities.

[14] The difference between a full stress test and a sensitivity analysis is explained in the CEBS Guidelines on Stress Testing (GL32), paras. 37-38.

- Option 5.2: No specification of the coordination.

Cost–benefit analysis

Given the nature of the topic and the absence of data, the analysis is mainly qualitative and high level.

Area	Options	Costs	Benefits
1) Relation between the business reorganisation plan and the recovery and resolution plans	Option 1.1: Full alignment of the business reorganisation plan with recovery and resolution plans.	▪ Not tailored to the specific objective of the business reorganisation plan. ▪ Failure to distinguish between the purposes and context of the recovery plan, the resolution plans and the business reorganisation plan and thus failure to meet the legal requirement to prepare a business reorganisation plan following resolution action. ▪ Risk of relying on a framework that has proved to be ineffective: if an institution or entity is subjected to bail-in measures, this means that the recovery plan failed and that the resolution plan has in fact been implemented.	▪ Easy to implement, as it would reduce the volume of information to be managed for resolution purposes. ▪ No additional cost and administrative burden for institutions or entities, as no additional data would be collected.
	Option 1.2: Include in the business reorganisation plan only the relevant information from the recovery and resolution plans.	▪ More costly to implement than option 1.1, as it would require: - regulators to identify accurately the relevant and common content of the three different plans; - Institutions or entities to collect additional information.	▪ Avoids overlaps and inconsistency between plans. ▪ Allows more tailoring and flexibility, as the business reorganisation plan would not be fully bound by specifications of the recovery and resolution plans.
	Option 1.3: Develop a stand-alone business reorganisation plan with no reference to the recovery and resolution plans.	▪ Most costly option and would potentially lead to duplication of work and overlap in the assessments of existing plans. ▪ Increases the risk of inconsistency across institutions' or entities' plans.	▪ Ensures maximum tailoring, as the business reorganisation plan would not be bound at all by specifications of the recovery and resolution plans.
2) Interaction with State aid rules	Option 2.1: Full alignment of the business reorganisation plan with the restructuring plan rules, regardless of whether the institution or entity's resolution relies on State aid.	▪ Rules not tailored to the specific objective of the business reorganisation plan. ▪ Rules will not be relevant for institutions or entities whose resolution does not rely on State aid. ▪ Add complexity to business reorganisation plan, as it may result in requiring measures which are not necessary for the business reorganisation of all institutions or entities (such as	▪ Easy to implement, as it would reduce the volume of information to be managed for resolution purposes. ▪ No additional cost for institutions or entities whose resolution relies on State aid.

		compensatory measures for the distortion of competition).	
	Option 2.2: Alignment with relevant information of the restructuring plan only if the institution or entity's resolution relies on State aid; cooperation with the European Commission where State aid is involved	▪ More costly to implement than option 2.1, as it would require : - regulators to identify accurately the relevant and common content of the two different plans; - institutions or entities to collect additional information; - need for communication and exchange of information.	▪ Tailors the business reorganisation plan to the institution's or entity's specificities (reliance on State aid or not). ▪ Ensures administrative savings and coherence with the restructuring plan and its assessment, when applicable. ▪ Avoids putting too much emphasis on the State aid aspect, which may not be relevant for the business reorganisation plan and should be encouraged (general objective of the BRRD).
	Option 2.3: Develop a stand-alone business reorganisation plan with no reference to State aid rules.	▪ Most costly option (especially if State aid is implemented). ▪ Would potentially lead to a duplication of work and to overlap with the restructuring plan. ▪ Increases the risk of inconsistency across EU regulations.	▪ Ensures maximum tailoring, as the business reorganisation plan would not be bound at all by State aid rules. ▪ No cooperation cost.
3) Specification of the worst-case scenario	Option 3.1: Full stress testing.	▪ May be complex and costly to design. ▪ It is necessary to agree on the hypothesis and methodology in a very short period of time. ▪ Assessment of the outcome may be difficult to interpret and time-consuming. ▪ Given the diversity of institutions' or entities' business models, this approach may be too burdensome for some institutions or entities.	▪ Ensures a very strong business plan that can sustain unexpected shocks.
	Option 3.2: Sensitivity analysis based on a significant, albeit plausible, change in the key underlying assumptions in comparison with the base-case scenario.	▪ Additional administrative costs, as it would require extra data collection for institutions or entities.	▪ Simpler and easier to implement and monitor than option 3.1. ▪ Enhances the credibility of the business reorganisation plan and avoids further bail-in or resolution, to the extent possible to predict. ▪ Proportionate to the institution's or entity's particular needs and possibilities. ▪ Would ensure greater harmonisation than option 3.3. ▪ Would be in line with the BRRD mandate.
	Option 3.3: No specification.	▪ Would create differences in treatment between institutions or entities across jurisdictions (less harmonisation). ▪ Adverse scenarios may be underestimated.	▪ More flexible, as it allows a case-by-case approach.

	Option 4.1: Completely new the guidelines.	▪ Significant additional administrative costs for the resolution and competent authorities.	▪ Ensures strong and tailored rules for the approval of the strategy and risk profile of the bridge institution.
4) Business reorganisation plan requirement, when applying other resolution tools	Option 4.2: Extend the scope of the guidelines on the business reorganisation plan to only those requirements of the RTS and the guidelines that would be relevant for the approval of the strategy and risk profile of the bridge institution.	▪ Some administrative costs for the resolution and competent authorities. ▪ Not clear that the requirement is applicable, because the bridge institution is in principle temporary and may not always be sold.	▪ Provides the option for the resolution authority to ensure that the bridge institution is viable or has a credible business model that can fulfil its obligations, and allow its sale. ▪ Provides a level playing field and ensures that the use of the resolution tool will not differentiate the quality of the criteria for the approval of the resulting or remaining institution.
	Option 4.3: No specification of additional requirements.	▪ Failure to ensure the best conditions for the sale of the bridge institution.	▪ Even without provision in the guidelines, enables the resolution authority to request a business reorganisation plan.
5) Coordination between the resolution and competent authorities when assessing the business reorganisation plan and the progress report	Option 5.1: Extend the scope of the guidelines to include provisions for the coordination of the actions and contacts between the authorities.	▪ Some administrative burden, as authorities will need to establish a special process for their contact with the competent authority when applying the bail-in tool.	▪ Avoids a prolonged conflict between the resolution and competent authorities. ▪ Creates the conditions for a coordinated exchange of opinions. ▪ Provides a dispute resolution mechanism.
	Option 5.2: No specification of the coordination.	▪ In case of disagreement, there is risk of contradictory messages and uncertainty as to the fate of the institution under resolution, when the competent authority does not grant its agreement. ▪ Unclear interlocutor for the management body of the institution.	▪ Allows flexibility in solutions, depending on the nature of the problem.

Preferred options

Option 1.2: Include in the business reorganisation plan only the relevant information from the recovery and resolution plans. This option would ensure a great degree of consistency and would reduce operational costs and administrative burden (as it uses information already available but only to the extent that this information is actually relevant to the business reorganisation plan).

Option 2.2: Alignment with relevant information of the restructuring plan only when the institution's or entity's restructuring relies on State aid; cooperation with the European Commission where State aid is involved. This option achieves administrative savings, has the benefits of simplicity and coherence, and uses assessment and information already tested through the preparation of the State aid restructuring plans for institutions or entities in recent years. In contrast to the other options, it requires compliance with the restructuring plan only when State aid rules apply. It also requires cooperation only on points that may prove

contentious, such as the viability analysis, and it thus retains the specificities of the business reorganisation plan.

Option 3.2: Sensitivity analysis based on a significant, albeit plausible, change in the key underlying assumptions in comparison to with the base-case scenario. This option avoids overly burdensome processes and ensures that all EU institutions or entities are subject to the same requirements, which will enhance the credibility and robustness of the business reorganisation plan under predictable conditions.

Option 4.3: No specification of additional requirements. Since the absence of specification in the guidelines does not prevent the resolution authority from requesting a business reorganisation plan in other circumstances, there seems to be no compelling reason to add a specification of additional requirements at this stage.

Option 5.1: Extend the scope of the guidelines to include provisions for the coordination of the actions and contacts between the authorities. This option avoids a conflict between the authorities and allows a coordinated exchange of opinions. The administrative burden can be reduced by establishing a flexible approach in the spirit of cooperation, without adding additional layers of formal decision-making.

Views of the Banking Stakeholder Group (BSG)

Overall, the Banking Stakeholder Group (BSG) supported the approach taken by the draft RTS and the guidelines and considered it appropriate to address the relevant aspects of the business reorganisation plan.

In particular with regard to the consideration of the impact of the reorganisation strategy and measures on the functioning of the financial system and the overall financial stability, the BSG considered that such an analysis by the institution or entity under resolution would add only limited value, while an analysis by the resolution and competent authorities would be much more relevant.

The BSG also noted that, in cases in which the bridge institution resolution tool is used, the analyses included in the RTS and the guidelines could be valuable when the resolution is characterised by material changes in the strategy and risk profile of the institution under resolution.

Finally, the BSG supported the initiative of the EBA to extend the scope of application of the guidelines to include provisions on the coordination between the resolution and competent authorities. While the BSG strongly supported the separation of resolution and competent authorities, close cooperation among these authorities and alignment of their approach with the assessment of the business reorganisation plan were considered to be of utmost importance.

Feedback on the public consultation

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

The consultation period lasted for 3 months and ended on 9 June 2015. Six responses were received, of which four were 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 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 RTS and the guidelines have been incorporated as a result of the responses received during the public consultation.

Summary of key issues and the EBA's response

Impact of the reorganisation strategy on the financial system and financial stability

Along with the BSG, most respondents considered that the assessment of the impact of a reorganisation on the financial system and the overall financial stability should be carried out by the resolution and competent authorities instead of the institution or entity under resolution. However, one respondent considered that the business reorganisation plan could assess the impact of the reorganisation on critical functions.

The EBA agrees with these remarks and has introduced relevant language in the draft RTS and the guidelines.

Business reorganisation plan requirement in resolution with bridge institution tool

In addition to the BSG, three other respondents considered it useful to prepare a business reorganisation plan or have a similar approach for the reorganisation strategy in the event of a bridge institution tool, out of which one considered it useful in any resolution case where a business reorganisation was necessary.

Since the absence of specification in the guidelines does not prevent the resolution authority from requesting a business reorganisation plan in other circumstances, there seems to be no compelling reason to add a specification of additional requirements at this stage.

Timescale to prepare the business reorganisation plan

Respondents raised concerns with regard to the timeline in relation to the preparation and submission of the business reorganisation plan. In particular, they requested more clarity as to when the restructuring period would start (when the bail-in tool would be considered to have been applied) and pointed that the timeframe available to develop the business reorganisation

plan seemed insufficient (maximum 2 months). One respondent suggested permitting the institution or entity to submit a high-level plan setting out its strategy for restoring its long-term viability, with the ability to supplement it at a later stage, in order to fulfil the draft RTS requirements.

These issues fall outside the scope of these RTS and these guidelines. However, it is advisable that the management body or the person or persons appointed to operate the institution following resolution should start working on the preparation of the business reorganisation plan and engage with the resolution and competent authorities as soon as feasible following resolution action.

Coordination between the resolution and competent authorities (Guidelines Title III)

In addition to the BSG, two other respondents supported the inclusion of Title III in the guidelines with the provisions for coordination between the resolution and competent authorities when assessing the business reorganisation plan and the progress report.

The EBA welcomed this feedback and decided to maintain this section of the guidelines, with relevant amendments.

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

Comments	Summary of responses received	EBA analysis	Amendments to the proposals
Responses to questions in Consultation Paper EBA/CP/2015/05			
Question 1. Do you consider it relevant to define the 'reorganisation period'? Do you consider the current definition clear?	All respondents supported the need to define the 'reorganisation period' in a flexible way, as was the case in the consultation paper. One respondent pointed out that nonetheless the reorganisation period should be transparently set for each case of reorganisation. Another respondent considered that the reference of the guidelines (Title II, 3.4) to a reorganisation period 'as short as possible' could lead to suboptimal reorganisation actions and proposed a change to 'as short as practical'. Three respondents requested more clarity as to when the restructuring period would start, in particular when the bail-in tool would be considered to have been applied. One respondent pointed to difficulties in taking a view on long-term viability in the context of a systemic crisis (according to Article 52(4) of the BRRD the business reorganisation plan should set out measures to restore the long-term viability of the institution). Finally, three respondents raised more general concerns with regard to the timeframe available to develop the business reorganisation plan (maximum 2 months) and the shareholder approval rights.	The EBA agrees that the reorganisation period should be transparently set for each case of reorganisation. The EBA considers, however, that the long-term viability of the institution should indeed be restored as soon as possible, taking into account any practicality issues. The language in the RTS and the guidelines already supports this approach. The EBA considers that the management body or the person or persons appointed to operate the institution following resolution should start working on the preparation of the business reorganisation plan and engage with the resolution and the competent authorities as soon as feasible following resolution action. However, when the bail-in tool should be applied and the deadline for submitting the business reorganisation plan are questions of interpretation of the BRRD and are therefore out of the scope of these RTS or these guidelines. Similarly, the requirement to restore viability in the long term is a BRRD requirement and can therefore not be altered through these RTS or these guidelines.	Clarify term definition in the RTS (Article 1(3)) and the guidelines (Title II, 3.4). Add requirement in RTS (new Article 2(3)(c)). No amendment on the timing of the bail-in application, the timeframe available to prepare the business reorganisation plan and long-term viability.

Comments	Summary of responses received	EBA analysis	Amendments to the proposals
Question 2. Is the concept of "business line" sufficiently clear? Can measures and performance be provided at a "business line" level?	Four respondents considered the concept of 'business line' clear, while two other respondents considered the concept unclear, as there is no definition, but found this unproblematic, given the inherent flexibility in defining a business line. Two respondents considered that performance benchmarks at 'business line' level may not be available on a sector-wide basis, due to the different delineation of business lines in each institution. Three respondents considered that regulatory measures and metrics, such as capital, could not be provided at 'business line' level, as such measures and metrics are relevant only at group or entity level (unless a 'business line' is identical to an entity). Two respondents considered that the concept of 'entity' was less relevant or had to focus on significant entities and key divisions, which are systemically relevant.	The EBA reckons that performance benchmarks at 'business line' level may not always be available and that regulatory measures can be provided only at group or entity level. In some instances, the language in the guidelines and the RTS caters for such cases ('appropriate benchmarks'). The language of the RTS and the guidelines is without prejudice to the resolution strategy and the focus of the reorganisation. However, the language could indeed be read as requiring an excessive amount of information for entities or business lines that would not be meaningful for the reorganisation.	Clarify the requirements of the RTS (new recital 8) and the guidelines (II, 2.1).
Question 3. Do you agree that an institution under resolution should use the reorganisation opportunity to address any shortcomings in the remaining business?	Most respondents considered that addressing any shortcomings in the remaining business should not be a requirement for the business reorganisation plan (one respondent) or should be a secondary requirement in the broader context of the institution's strategic assessment (three respondents) or should be required only if such shortcomings impact the long-term viability of the	The language in the RTS already subjects this requirement to shortcomings '*that may have an impact on [the institution's] long-term viability*'. It is therefore considered that, if not addressed, such shortcomings may impede the institution's viability. Thus, such action should not be seen as complementary.	No amendment.

Comments	Summary of responses received	EBA analysis	Amendments to the proposals
	firm (one respondent). All respondents agreed on the need for the management and the resolution authority to focus on addressing the issues that led to the institution's failure.		
Question 4. Is it appropriate to consider the impact of the reorganisation strategy and measures on the functioning of financial system and the overall financial stability? Would it be appropriate to further detail the requirement regarding the impact of the reorganisation strategy on specific metrics, such as lending?	Four respondents considered that the assessment of the impact of a reorganisation on the financial system and the overall financial stability should be carried out by the resolution and competent authorities. One respondent considered that the business reorganisation plan could assess the impact of the reorganisation on critical functions. In a similar vein, one respondent suggested assessing whether the business reorganisation plan is consistent with the resolution strategy with regard to the functioning of the financial system and the overall financial stability. Three respondents considered it unnecessary to detail this requirement further. Finally, one respondent pointed out the difficulty in relying on sector-wide benchmarks to compare the assumptions regarding the macro-economic and market developments underlying the reorganisation strategy in a crisis context.	The EBA reckons that the business reorganisation plan should provide information on its impact on critical functions and foresee its impact on the financial system and the overall financial stability, but that the assessment should be carried out by the resolution and competent authorities. The language in the guidelines already caters for that assessment. On the other hand, an assessment of the business reorganisation plan's consistency with the resolution strategy would not add value: the resolution authority will have already decided on a resolution action and a comparison with the previously preferred resolution strategy would divert attention from the main problem at hand, the restoration of the institution's viability. The RTS should indeed consider the reliability of sector-wide benchmarks.	Amendment of the RTS (new recital 8) and the guidelines (Title II, 3.4 and 4.4).
Question 5. Is it feasible to obtain a commitment from the managers of the institution about the implications of the business reorganisation plan	Three respondents agreed, but expressed a preference for the appointment of responsible departments, rather than individuals. Three respondents raised concerns as regards the form that the management commitment should	The EBA reckons that individuals should be accountable for the execution of the business reorganisation plan to the extent that they have a relevant role in the institution. The rationale of the management commitment is to	Amendment in the guidelines (Title II, 1.1).

Comments	Summary of responses received	EBA analysis	Amendments to the proposals
and the appointment of responsible individuals in the institution for the implementation of the business reorganisation plan?	take. Two others pointed out shareholder accountability and governance issues, especially in the immediate aftermath of a bail-in, while a third respondent questioned the rationale. One respondent suggested that, when preparing the business reorganisation plan, the management would need to engage with key stakeholders, such as credit rating agencies, the (new) shareholders and non-EU resolution authorities.	avoid a situation whereby the business reorganisation plan is prepared by an outside expert without the management realising its implications for the institution or entity – this risk was recognised by another respondent, who agreed with the suggestion to obtain the management's commitment. The EBA agrees that the management should ensure a smooth cooperation with key institutional stakeholders and seek their support for implementing the business reorganisation plan. However, the support of business counterparties, such as credit rating agencies or Central Counterparties (CCP), should not be linked to the approval of the business reorganisation plan.	
Question 6. The BRRD requires a business reorganisation plan to apply only in the event of use of the bail-in tool to recapitalise an existing institution. Are any of the provisions of the RTS and the guidelines relevant in the event of use of the bridge institution tool, given the requirement that the resolution authority must approve the strategy and risk profile of the bridge institution? If so, which provisions do you consider	Two respondents considered it useful to prepare a business reorganisation plan or have a similar approach for the reorganisation strategy in the event of a bridge institution tool, but not under the same time constraints. Another respondent considered the analyses for the business reorganisation plan a useful input if the application of the bridge institution tool is accompanied by material changes in the institution's strategy and risk profile. Finally, one respondent considered it useful to prepare a business reorganisation plan in any resolution case when a business is reorganised. Finally, two respondents considered that no	The EBA is entitled to analyse the cost and benefit of providing guidance on issues, even if it does not refer to a specific mandate by the BRRD or any other regulation or directive. Since the absence of specification in the guidelines does not prevent the resolution authority from requesting a business reorganisation plan in other circumstances, there seems to be no compelling reason to add a specification of additional requirements at this stage.	No amendment.

Comments	Summary of responses received	EBA analysis	Amendments to the proposals
relevant and why?	provisions of the RTS and the guidelines should be extended in the event of a bridge institution tool, given the effective control of the resolution authority on the bridge institution, and suggested not including any cost–benefit analysis on that point.		
General comments			
Scope of business reorganisation plan	One respondent requested clarification as to the scope of the requirement to submit a business reorganisation plan, noting that subsidiaries located in non-EU countries and belonging to a group that has a multiple point of entry resolution strategy should not be within the scope of the business reorganisation plan.	The EBA notes that this issue is already clarified in the wording of Article 52(1) of the BRRD. Indeed, in the case of a multiple point of entry resolution, if the subsidiaries are excluded from the scope of the resolution, then the business reorganisation plan should not cover them, because the bail-in tool would not be considered as having been applied to such institutions or entities. Conversely, if such subsidiaries are included in the scope of the resolution, then they would be considered as institutions or entities to which the bail-in tool has been applied and thus they should be covered by a business reorganisation plan.	No amendment.
Acceptable financial return post reorganisation (RTS new Article 3(1)(c))	One respondent suggested better defining the 'return', while another respondent suggested defining 'acceptable' by making reference to peer institutions.	A more precise definition of 'return' would unnecessarily constrain the assessment of the resolution and competent authorities. As for the qualification of a return as 'acceptable', the guidelines include relevant language in Title II, 2.3.	No amendment.

Comments	Summary of responses received	EBA analysis	Amendments to the proposals
Fulfilling the minimum requirement for own funds and eligible liabilities (MREL) after resolution (RTS new Article 3(2))	Two respondents pointed out the need to first have a decision by the resolution authority on the 'new' MREL.	The EBA acknowledges that the resolution or the competent authority will eventually have to take a decision on the prudential and other regulatory requirements. However, it is advisable that the institution or entity starts working on meeting these requirements, pending a formal decision by the authorities.	Clarify the requirement in the RTS (new Article 3(2)).
Ex post valuation under BRRD Article 74 (RTS new Article 3(1))	One respondent proposed a clear reference to the *ex post* valuation carried out by an independent valuer following resolution action and bail-in (BRRD Article 74), in the context of the calculation of the proceeds from the divestment of assets.	The EBA notes that the *ex post* valuation is carried out for the purposes of assessing whether shareholders and creditors would have received a better treatment if the institution or entity had entered into normal insolvency proceedings.	No amendment.
Identification of the factors that caused the failure (RTS Article 2(1), Guidelines Title II, 3.1) Identify the divestment or spin-off of assets, entities or business lines (RTS new Article 2(4) and Guidelines, Title II, 3.3.4) Valuation of expected proceeds from divestment or spin-off of assets, entities or business lines (RTS new Article 2(5) and Guidelines, Title II, 3.3.5)	Two respondents considered that such information would have been already identified in the resolution plan or the documentation supporting resolution action, suggesting that the business reorganisation plan should include such requirements only for actions beyond those envisaged by the resolution plan or the documentation supporting resolution action. Another respondent proposed a valuation range, as opposed to a single point valuation.	The resolution plan is prepared before the assumption of resolution action and the failure of the institution. Its objective is the resolution of the institution in case of failure or likely failure. Similarly, the valuations carried out during resolution have as an objective conclusion of the resolution actions. In that sense, it is impossible for the resolution plan to foresee all the steps that may become necessary for the restoration of the institution's viability following resolution action (bail-in). Divestments may also take place at a time significantly later than the resolution, in particular taking market conditions into account. Such proceeds would be irrelevant for the conclusion of the resolution actions. Finally, the business reorganisation plan should be a	No amendment.

Comments	Summary of responses received	EBA analysis	Amendments to the proposals
		stand-alone document. With regard to the valuation, the EBA considers that the language in the guidelines allows for either a valuation range or a single point.	
Measures previously identified in the recovery plan or in the resolution plan (RTS new Article 2(8), cost–benefit analysis)	Two respondents pointed out that the recovery plan would be available to the institution or entity. The same respondents considered that the reorganisation plan should take into account or be based on the resolution plan and made specific suggestions in relation to the language in the cost–benefit analysis.	The EBA agrees on the accessibility of the recovery plan. The resolution plan is prepared before the assumption of resolution action and the failure of the institution. The business reorganisation plan should make an assessment of the situation of the institution or entity and plan its viability following the actual resolution, without any prejudice to measures that were planned earlier without knowledge of the particular circumstances that occurred around the actual resolution.	Amendment in RTS (new Article 2(8)) on recovery plans. Amendments in cost–benefit analysis following specific suggestions. No amendment on the other points.
Comparison with alternative reorganisation strategies (RTS Article 4(1)(b))	Two respondents suggested a specification that this requirement does not entail a fully fledged presentation of alternative strategies.	The EBA agrees, as indeed the intention is to require a brief presentation of alternative options.	Clarify the requirement in the RTS (Article 4(1)(b)).
Best- and worst-case scenarios (RTA Article 4(3) and (4); Guidelines Title II, 2.5 and 2.6, cost–benefit analysis)	Two respondents suggested changing to 'adverse case', as worst-case would be not reaching viability, requested more guidance on the definition of what consists such a case and pointed to the need for the worst-case assumptions to be aligned with the assumptions made by the resolution authority when determining the bail-in amount. The same respondents suggested amending the	The EBA considers that the term 'worst-case' is sufficiently clear and reflects the language in the BRRD (Article 52(4)). The guidelines offer clarity as to what should constitute a worst-case scenario (see Title II, 2.5). As regards the relationship between the worst-case assumptions of the business reorganisation plan and the assumptions made by the resolution authority when determining the bail-in amount, the EBA	No amendment on the best- and worst-case definition and assumptions. Clarify the relevant part of the guidelines (Title II, 2.6) and the cost–

Comments	Summary of responses received	EBA analysis	Amendments to the proposals
	reference of Article 4(4) from 'best-case' to 'base-case'. Finally, the same respondents pointed to unclear points in the cost–benefit analysis: (i) the definition of the worst-case scenario in comparison with the full stress testing and (ii) why the use of scenarios should be able to avoid further bail-in on resolution actions, given the valuation carried out by the resolution authority in the context of the application of the bail-in tool, which should cater for any foreseen future losses.	considers that the management body or the person or persons appointed to operate the institution following resolution should not subject their own judgement on their business model and its performance to the assessment of the resolution authority.[15] Similarly, the best-case requirement stems from Article 52(4) of the BRRD, is consistently referred to in the RTS (Article 4(3) and (4)) and indeed implies not that the business reorganisation plan is based on an optimistic best-case scenario, but that it takes it into account as a possibility, which could allow less severe reorganisation measures.	benefit analysis.
Frequency of performance indicators (RTS Article 5(1))	Two respondents suggested that performance indicators less frequent than quarterly would be considered inadequate.	The EBA agrees with this suggestion.	Amendment in the RTS (Article 5(1)).
Content of the progress report (RTS new Article 6(2))	Two respondents raised concerns of repetition as regards the requirements that the progress reports include the measures that are realised, the measures contemplated in the business reorganisation plan and the description of the upcoming measures.	The EBA partly agrees with this suggestion as regards the measures implemented in the past, although the progress report will need to be a stand-alone coherent document that should fully disclose the envisaged progress of the institution or entity's reorganisation.	Amendment in the RTS (new Article 6(2)(a)).
Assessment of the business reorganisation plan by the	Two respondents considered that the BRRD does not require a separate assessment of the business	The EBA considers that, for the competent authority to agree with the resolution authority's assessment,	No amendment.

[15] According to Article 73 of Directive 2013/36/EU, institutions shall have in place sound, effective and comprehensive strategies and processes to assess and maintain on an ongoing basis the amounts, types and distribution of internal capital that they consider adequate to cover the nature and level of the risks to which they are or might be exposed.

Comments	Summary of responses received	EBA analysis	Amendments to the proposals
competent authority and application of the SREP by the resolution authority (Guidelines Title II, 2.7 et seq.)	reorganisation plan by the competent authority, but simply that the competent authority agrees with the resolution authority's assessment. The same respondents considered that it is not appropriate to require the resolution authority to assess the business reorganisation plan using the guidelines on common procedures and methodologies for the supervisory review and evaluation process (SREP), as the resolution authority may not have sufficient experience to carry out such an assessment, and this could breach the BRRD requirement for an assessment of the business reorganisation plan by the resolution authority.	the competent authority will need to carry out its own assessment of the business reorganisation plan. This is also consistent with the fact that the resolved institution will need to fulfil the prudential and other requirements of the competent authority, in order to continue operating in the market. The EBA considers that the guidelines are sufficient in their requirement for the resolution authority to apply the SREP guidelines, while not undermining the overall requirement for an assessment by the resolution authority.	
Consistency with any business plans submitted by the same institution to any relevant authorities (Guidelines, Title II, 4.1)	Two respondents questioned the need for this provision.	In the context of regulatory or legal requirements, an institution or entity may be required to submit business plans for various purposes and with different focuses, for instance for capital market supervision. The guidelines cater for this, so that the business reorganisation plan which is submitted for the purpose of complying with the BRRD and includes measures to restore the institution or entity's viability should not contradict information included in other business plans prepared for other purposes and with perhaps diverging content.	No amendment.
References to or resolution plans (Guidelines Title II, 4.3.2)	Two respondents questioned the clarity and purpose of this provision.	The EBA agrees that this provision would be superficial.	Delete provision (Guidelines, Title II, 4.3.2).

Comments	Summary of responses received	EBA analysis	Amendments to the proposals
Coordination between the resolution and competent authorities (Guidelines Title III)	Three respondents supported the inclusion of Title III. Four respondents, including the afore-mentioned three, asked for clarifications with regard to the confidentiality of information sharing between the authorities and public disclosure of the business reorganisation plans. Two respondents questioned the mandate for this part of the guidelines, the scope of Title III (covering both the business reorganisation plan and the progress reports), provisions in relation to the timeline and the assessment of the progress report, and the scope of the EBA mediation (both resolution and competent authorities).	As described in the introductory remarks of the consultation paper, the EBA makes reference to Article 16 of the EBA Regulation with regard to its power to extended the scope of application of the guidelines to include other relevant provisions. The BRRD (Article 52(7)) refers to a 1-month deadline for only the assessment of the business reorganisation plan by the resolution and competent authorities, not their final approval. In addition, the submission of the progress report without an assessment (as implied by the respondents) would render the exercise meaningless and would prevent the resolution and competent authorities from using a useful tool in assessing the implementation of the business reorganisation plan. The EBA points to Article 4(2)(iv) of the EBA Regulation, which includes resolution authorities within the definition of 'competent authorities', including for coordination purposes. The legal analysis of the respondents is therefore incomplete and misleading. Finally, as for the confidentiality of information sharing and public disclosure, any such provision would be outside the scope of these RTS and guidelines.	No amendment.
Independent expert (Guidelines, Title II, 5.3)	One respondent enquired whether the assessment by the independent expert would be included as part of the initial approval process or rather as part	The EBA considers that the provisions of Directive 2014/59/EU are clear as regards the powers of the resolution and competent authorities for the	No amendment.

Comments	Summary of responses received	EBA analysis	Amendments to the proposals
	of the business reorganisation plan monitoring and whether that assessment could trigger a need for resubmission of the business reorganisation plan.	submission and amendment of a business reorganisation plan. Therefore, any assessment by an independent expert should be in line with these powers.	

6. Confirmation of compliance with guidelines and recommendations

Date:
Member/EEA State:
Competent authority
Guidelines/recommendations:
Name:
Position:
Telephone number:
E-mail address:

I am authorised to confirm compliance with the guidelines/recommendations on behalf of my competent authority: ☐ Yes

The competent authority complies or intends to comply with the guidelines and recommendations: ☐ Yes ☐ No ☐ Partial compliance

My competent authority does not, and does not intend to, comply with the guidelines and recommendations for the following reasons:[16]

Details of the partial compliance and reasoning:

Please send this notification to compliance@eba.europa.eu

[16] In cases of partial compliance, please include the extent of compliance and of non-compliance and provide the reasons for non-compliance for the respective subject matter areas.