

EBA Consultation on Guidelines to institutions and resolution authorities on resolvability testing

General considerations

The BSG welcomes EBA's Consultation on Guidelines to institutions and resolution authorities on resolvability testing. Almost ten years since the set-up of the resolution framework in the EU, it is now time to test the capacities that banks have been building in coordination with the resolution authorities. These Guidelines aim at establishing efficient and effective practices within the EU so as to ensure a common, uniform and consistent application of Union law.

The guidelines provide a much-needed harmonization in the field of resolvability testing at EU level. The proposal to create a Master Playbook is a meritorious idea: a single holistic document with general guidelines and a brief explanation on the connection of different elements of the process is a positive development. Most systemically significant banks have the ambition to, in the self-assessment, paragraph by paragraph, describe how they comply with the provisions in the resolvability guideline. The introduction of a Master Playbook therefore seems to be a natural next step.

In order for the single playbook to achieve its stated objectives it is important to maintain consistency with other requirements already in place, especially the recovery planning framework and early intervention measures (EIM) applied by the competent authorities. These topics, which fall under "going concern" supervision, are closely monitored within the prudential and supervisory framework. We agree that it is of high importance to create a holistic perspective that aligns supervisory and resolution scenarios. At the same time, it is essential to preserve a high degree of clarity in the treatment of issues, and not to create any potential for ambiguity. The determination of "failing or likely to fail" is the most critical inflection point in this process and should serve as the primary point of reference. To the extent that specific requirements have already been taken care of under the relevant supervisory frameworks, especially in the recovery plan, should they could be integrated into the Master Playbook, and cross-referenced accordingly.

The BSG notes that close coordination and alignment between supervisory and resolution authorities is important for the effectiveness of the resolvability testing process. Duplication of efforts, e.g. with

respect to information requests, should be avoided and information provided by the institutions shared between authorities wherever it is legally possible and practicable.

For the testing and self-assessment process to operate effectively, banks would require a commensurate degree of visibility regarding their resolution plans. The BSG appreciates that resolution plans are drafted by resolution authorities under their own responsibility, in accordance with the Bank Recovery and Resolution Directive. Banks would, however, prefer to work with appropriate guidance rather than make potentially inaccurate assumptions on the content of resolution plans.

Also, it is positive that the guidelines incorporate a significant element of proportionality. For example, only the largest banks need to draft a Master Playbook. Some members of the BSG are of the view that the development of Master Playbooks could be beneficial also for medium-sized, less complex banks. In keeping with the proportionality principle the latter could, however, be subject to a less comprehensive set of requirements.

The lack of a common legal framework in Europe regarding corporate groups makes the effective implementation of these tests very challenging for the credit institutions, risking making the results less credible. For this reason, it would be appropriate, especially in the master playbook, to dedicate specific information requests on the application at group level, with particular attention to corporate governance, and on any obstacle to the prompt implementation of resolution plans due to the absence of rules on corporate groups. Then considering that the three tools apply at resolution entity level as well at resolution group entity level, the guidelines should establish an express role for the resolution colleges which allows the coordination of the authorities in the assessment of the testing exercises. In case of a cross-border banking group, it is essential that resolution colleges dialogue with credit institutions in the preparation phase of the tests and in their implementation.

Finally, the testing and self-assessments might be used as the basis for the supervision program that will start to be carried out by resolution authorities (on-site inspections, deep dives, etc.). In this sense, a high level of coordination and communication between resolution authorities and supervisors is desirable, in order to avoid overlapping requests. Resolution authorities should thus reconcile their approaches to the three new components of the resolvability guidelines (self-assessment report, Master Playbook and multi-annual testing plan) with each other in the resolution college, to avoid diverging requirements and expectations across the EU.

Response to questions raised in the Consultation

Questionnaire

1. Do you have any comments on the proposal to introduce a self assessment report to improve banks involvement in the resolution planning process?

We welcome the EBA proposal to stipulate, that banks should produce a self-assessment report. We would also welcome if the EBA was to increase transparency in this context and if the EBA would harmonize the approach of resolution authorities to the self-assessment report.

Increased transparency:

Banks are obliged to provide resolution authorities with the information required to draft the resolution plan. Said Plan is drafted by the authority, but banks do not have unrestricted access to it. Some members of the BSG are of the view, therefore, that more transparency regarding resolution plans may be needed for banks to be able to carry out self-assessments. Other members of the BSG believe that the self-assessment should be seen as part of an existing dialogue between banks and the resolution authority, which would be complemented and enhanced by the proposed Guidelines. Resolution authorities are already providing comprehensive and regular guidance, including, but not limited to, their expectations on resolvability. The self-assessment should be seen in this context, i.e. as a comprehensive, and specific response by the bank to the requirements already communicated by the resolution authority.

Information is key to prepare a reliable self-assessment. Bank would benefit from guidance being provided by resolution authorities on the content of their resolution plans. Input from authorities is crucial for banks to have all the necessary information and develop their self-assessment. Such guidance would complement banks' efforts, given that in the absence of such guidance they would need to rely on assumptions regarding how authorities are planning to carry out a resolution process. The BSG understands, however, that their mandate obliges resolution authorities to strike a careful balance as to what information is shared with banks.

An EU-harmonized approach to the self-assessment report:

It is important to note that banks already spend significant amounts of resources on self -assessment of resolvability, establishing playbooks, preparing for dry-runs and for various testing activities in relation to the topic. Most systemically significant banks have the ambition to, in the self-assessment, paragraph by paragraph, describe how they comply with the provisions in the resolvability guideline. A formalized structure for this report, harmonized across the EU, would contribute to clarity on what is to be delivered, and would, above all, be useful for cross border groups.

Finally, as part of the ongoing work to assure resolvability we agree that it is essential to perform a "gap analysis". As the guidelines enter into force 2024, some members of the BSG question whether there is a need for a complete and all-encompassing "gap analysis" post the date where compliance is expected (in relation to par. 124.c.). However, resolvability is likely to remain a moving target and it would appear prudent therefore for banks to continue assessing potential gaps.

2. Do you have any comments on the list of questions to banks included in the self assessment as set out in para 124-125?

The elements described in para. 124-125 seem reasonable. Again, banks are looking for guidance from the resolution authorities in order to properly self-assess their resolvability.

With regards to par. 125.a. we welcome the dialogue with the resolution authority, this will create a broader base of understanding between the institution and the resolution authority, only benefiting the cooperation to increase the resolvability and thus benefiting financial stability. We want to stress that the institutions do not have full insight into the resolution plan and that the resolution authorities share information on a "need-to-know basis", but we welcome a dialogue so that the resolution authorities are able to know how the institutions perceive the information shared.

Also, in some jurisdictions the Supervisory authority and the resolution authority are different, separated authorities. Such a supervisory model significantly increases the need to take the recovery plan into consideration when creating the resolution plan.

In these paragraphs explicit mention should be made of the legal impediments that make the self-assessment report difficult, with particular attention to those deriving from the absence of a regulation of groups at European level both in terms of company law and in bankruptcy law.

3. Do you have any comments on the proposal to require authorities to communicate a multiannual testing programme?

In order to ensure seamless cooperation between supervisory and resolution authorities, on the one hand, and between the authorities and banks, on the other, coordination and communication between different authorities is key. In particular, overlapping requests during the testing programme should be avoided: cooperation among authorities is crucial to avoid different requests by different authorities having the same scope and objective, but with a different frame. Authorities should be encouraged to make use, as much as possible, of relevant information provided by banks to other authorities. Any obstacles, legal or practical, that prevent supervisory and resolution authorities from sharing relevant information should be removed to the extent possible.

If such coordination can be achieved, a multi-annual testing programme would have the benefit of giving banks a long-term view of which testing activities are to be carried out and in which order, over a three-year period. This is expected to increase clarity around bank's obligations and expectations on banks' testing activities, and also to provide a basis for dialogue between banks and resolution authorities. Furthermore, it could contribute to allowing banks to plan activities and to efficiently use their resources needed to conduct these testing activities.

In relation to par. 131, we would like to highlight the importance of common understanding of the definition of a timeframe, as a "reasonable timeframe". The lack of a common definition might lead to different interpretations.

Some members of the BSG question whether there is a need for banks to continue to make yearly self-assessments in parallel with multi-annual testing programs that are repeated on a three-year

basis. They are of the view that the frequency of the self-assessments should gradually be decreased. as was the case with the EBA stress tests, where self-assessments could be annual for the first 2-3 years, and then be decreased to every second or third year. Other members of the BSG agree with the EBA's proposal on the grounds that resolvability should not be viewed as a steady state but as a continuous process that forms an essential part of a bank's overall risk management architecture.

Some members of the BSG argue that the choice of testing techniques should be left to the institution in order to ensure a relevant and risk-based testing. 'Dry-runs', further supported by a forward-looking testing concept, should be developed by institutions and shared with the resolution authorities. In addition, following a 'dry-run exercise', a 'lessons learned' report could be developed and submitted to the resolution authorities, to assure that the multiannual testing program is as relevant as possible. Other members of the BSG maintain that the present draft Guidelines, which suggest that resolution authorities should determine the testing methodologies, practices, and tools, reflect the allocation of responsibilities in Level 1 legislation. Given that resolution authorities are responsible under the BRRD and SRMR for drawing up resolution plans and assessing resolvability it appears appropriate that they should be free to choose the most suitable instruments for discharging that responsibility. It would be difficult to envisage that authorities should be bound in their implementation of testing programmes by choices made by the entities subject to such testing, while remaining legally liable for the outcome. The BSG agrees that the resolution authorities should take into account, among others, the specific circumstances of the institution when defining suitable testing methodologies and tools.

4. Do you have any comments on the proposal to introduce a master playbook for the more complex banks?

As a general idea, the creation of a single Master Playbook is a natural next step: a single document with general guidelines, and an explanation on the interplay of different elements of the resolution process (such as other playbooks, FMI contingency plans, Business Reorganisation Plan, etc.).

In any case, this new requirement should be consistent with other required documents in order to avoid confusion. An overly cumbersome document would go against the objective of having a practical guide.

In relation to a master playbook, it is essential to distinguish between the "roles and responsibilities" of the institution, the supervisory authority and the resolution authority (please also see under general remarks).

In the Guidelines it is referred to what the Master Playbook should contain, and it is specified that it should be developed by the institution. Par. 139.a asks the institution to "define key roles and responsibilities of senior management in the run-up to and during resolution", However the run-up to resolution is considered to be what is covered by the recovery plan of the institution. If (/when) the supervisory authority assesses that the institution is "Failing Or Likely to Fail" (FOLTF), it poses the question to the resolution authority whether the institution should be set in resolution or treated under normal insolvency. At the point of resolution, the resolution authority is taking control over the institution.

Hence, we consider that item a-c of the Master Playbook, which should be covered already by the recovery plan, should be fully aligned, and cross-referenced with that plan.

With regards to item e. the elements specified refer to the resolution strategy, which is part of the resolution plan. The resolution plan (and how to handle the institution in resolution) is the responsibility of the resolution authority. Some members of the BSG question, therefore, whether the institution is in fact the most suited to develop a master playbook, as the institution is not 1) responsible for resolution; and 2) not fully informed of the resolution plan.

These members argue that if the institution will be required to develop the Master Playbook, a significantly higher degree of transparency towards the institutions on the content of the resolution plan would be necessary. If the institution should be responsible to plan the resolution phase, we foresee that the institution would also need a more prominent role in the resolution planning stage. This, in order to make the master playbook more relevant and not just be a “paper product” for hypothetical resolution situations.

Other members of the BSG are of the view that the Master Playbook represents the bank's own perspective on its resolvability, which should mirror the authorities' relevant guidance, such as the Single Resolution Board (SRB)'s expectations and/or other relevant information communicated by the SRB and member-state resolution authorities. In this view, the Master Playbook represents a "living document" that becomes part of the discourse between the institution and (resolution and supervisory) authorities. Bearing in mind that resolvability is not a steady state, and resolution plans are susceptible to change in response to changing circumstances, the EBA's approach appears balanced and promises to bridge the gaps that currently exist in the dialogue between authorities and banks.

The Master Playbook should, on a high level, mirror the internal work that banks are already performing in the self-assessment, in order to get a complete picture of the requirements that need to be fulfilled. To the extent possible, and without compromising confidentiality in respect of the resolution plan, the Master Playbook should be designed so that it corresponds to actual processes that are expected to take place in the event of resolution. Some members on the BSG believe that the requirements on the Master Playbook should also give flexibility regarding the timeline for each different component. They argue that it may be very challenging for a bank to, as a "going concern", to estimate how fast or how slowly a certain component of the resolution scenario could be implemented. Other members of the BSG note that banks, like other businesses, continuously operate under uncertainty. Planning processes and playbooks are used, on this and many other occasions, specifically to provide ex-ante frameworks for managing uncertainty and the timelines they envisage represent a "best efforts" scenario.

Some members of the BSG are of the view that the development of Master Playbooks could be beneficial also for medium-sized, less complex banks. In keeping with the proportionality principle the latter could, however, be subject to a less comprehensive set of requirements.