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Consultation Paper

Draft Guidelines

On the application of simplified obligations under Article 4 of the
Bank Recovery and Resolution Directive (BRRD)

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1. Responding to this Consultation

The EBA invites comments on all proposals put forward in this paper and in particular on the specific questions summarised in 5.2.

Comments are most helpful if they:

- respond to the question stated;
- indicate the specific point to which a comment relates;
- contain a clear rationale;
- provide evidence to support the views expressed/rationale proposed; and
- describe any alternative regulatory choices the EBA should consider.

Submission of responses

To submit your comments, click on the 'send your comments' button on the consultation page by 03.01.2015. Please note that comments submitted after this deadline, or submitted via other means, may not be processed.

Publication of responses

Please clearly indicate in the consultation form if you wish your comments to be disclosed or to be treated as confidential. A confidential response may be requested from us in accordance with the EBA's rules on public access to documents. We may consult you if we receive such a request. Any decision we make not to disclose the response is reviewable by the EBA's Board of Appeal and the European Ombudsman.

Data protection

The protection of individuals with regard to the processing of personal data by the EBA is based on Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000 as implemented by the EBA in its implementing rules adopted by its Management Board. Further information on data protection can be found under the Legal notice section of the EBA website.

2. Executive Summary

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

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

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

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

Competent authorities and resolution authorities should have regard to all of the criteria in the order specified in the Guidelines (size, interconnectedness, scope and complexity of activities, risk profile, legal status, nature of business, shareholding structure, legal form and the membership of an institution in an IPS or other mutual solidarity system). Some of the criteria play a distinctive role only in circumstances when the criteria which are the first in order against which institutions

are to be assessed (size, interconnectedness, complexity) do not conclude the analysis for the institution concerned in an unambiguous manner.

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

The Guidelines include a number of mandatory indicators which should be used by competent authorities and resolution authorities when assessing institutions against the criteria. The mandatory indicators have been assigned to specific criterion in order to promote a uniform approach to the assessment of institutions against the criteria.

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

This approach (the combination of mandatory and optional indicators) ensures that the assessment process can be conducted in a proportionate manner in line with the characteristics of the institution or category of institution under consideration in the jurisdiction concerned.

The Guidelines are complemented by the EBA's draft implementing technical standards (ITS) to specify uniform formats, templates and definitions for the identification and transmission of information to the EBA on how authorities have applied simplified obligations. The EBA will use information submitted in accordance with the ITS to assess how the principle of proportionality has been applied by competent authorities and resolution authorities for the purposes of informing the EBA's report to the European Parliament, the Council and the Commission under Article 4(7) of the BRRD. This report shall, in particular, identify any divergences of approach between authorities in terms of the assessment of institutions against the criteria (taking account of the EBA's Guidelines) and the nature of the simplified obligations imposed in each case. The report must be submitted by 31 December 2017.

3. Background and rationale

Objective

Directive 2014/59/EU (BRRD) sets out requirements for institutions and relevant parent undertakings (in relation to groups) to draw up and maintain recovery plans on an annual basis, and provide information relevant for the development of resolution plans, and to submit that material to, respectively, the competent authorities and the resolution authorities (together, authorities). The information to be included in the recovery plans is set out in Section A of the Annex of the BRRD and is further specified in the EBA's draft Regulatory Technical Standards (RTS) on the Content of Recovery Plans.¹ The BRRD also sets out requirements for resolution authorities to draw up and maintain resolution plans for institutions and groups. Articles 10(7) and 12(3) of the BRRD specify the information to be included in resolution plans for, respectively, institutions and groups and as further specified in the EBA's draft RTS on Resolution Plan Requirements.² Article 11 and Section B of the Annex of the BRRD list the information resolution authorities may request for the purposes of drawing up and maintaining resolution plans. The BRRD further requires resolution authorities to carry out resolvability assessments for institutions and groups (Articles 10(2), 12(4), 15 and 16 of the BRRD).

The requirements regarding recovery planning, resolution planning and resolvability assessments should be applied proportionately reflecting *inter alia* the systemic importance of the institution concerned. Pursuant to Article 4 of the BRRD authorities should decide the level of detail regarding the relevant requirements for institutions having regard to the criteria specified in Article 4(1) of the BRRD and as further specified in these Guidelines. Competent authorities should make the assessment for recovery planning purposes and resolution authorities for resolution planning purposes, including for the purposes of conducting resolvability assessments. Competent authorities and, where relevant, resolution authorities shall make the assessment after consulting, where appropriate, the macroprudential authority (Article 4(2) of the BRRD).

Authorities may decide to apply simplified obligations for institutions which, having regard to the criteria, are found to be non-systemic and whose failure and subsequent winding up under normal insolvency proceedings would not be likely to have a significant negative effect on financial markets, on other institutions, on funding conditions or on the wider economy. If an

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

² The EBA's Consultation Paper on draft RTS on the content of resolution plans and the assessment of resolvability is available here: http://www.eba.europa.eu/news-press/calendar?p_p_id=8&p_p_lifecycle=0&p_p_state=normal&p_p_mode=view&p_p_col_id=column-1&p_p_col_count=1&_8_struts_action=%2Fcalendar%2Fview_event&_8_redirect=http%3A%2F%2Fwww.eba.europa.eu%2Fnews-press%2Fcalendar%3Fp_p_id%3D8%26p_p_lifecycle%3D0%26p_p_state%3Dnormal%26p_p_mode%3Dview%26p_p_col_id%3Dcolumn-1%26p_p_col_count%3D1%26_8_tabs%3Devents%26_8_eventTypes%3Dconsultation%252Cdiscussion&_8_eventId=751474.

institution's failure and subsequent winding up under normal insolvency proceedings is considered to be likely to have a significant negative effect on financial markets, on other institutions, on funding conditions or on the wider economy, full obligations should apply.

The assessment as to whether it is appropriate for simplified obligations to apply shall be done regularly, for example, when reviewing recovery plans or at any time when the relevant authority considers that, in light of the circumstances, it may be appropriate for simplified obligations (or full obligations) to apply. It is important that the assessment is kept under review as the information requirements and recovery and resolution strategy may change from time to time, for example, in light of prevailing market conditions (for instance, when market conditions are benign a small institution's failure may not be regarded as potentially systemic but under extreme market conditions it may be that the institution's failure and winding up under normal insolvency proceedings may have systemic implications necessitating a more detailed resolution plan to be put in place should that institution encounter serious financial difficulties).

The criteria specified in Article 4(1) of the BRRD are:

- size;
- interconnectedness to other institutions or to the financial system in general;
- the scope and the complexity of activities;
- risk profile;
- legal status;
- nature of business;
- shareholding structure;
- legal form;
- membership of an IPS or other cooperative mutual solidarity systems as referred to in Article 113(7) of Regulation (EU) No 575/2013 and any exercise of investment services or activities as defined in point (2) of Article 4(1) of Directive 2014/65/EU.

The BRRD requires the EBA to issue guidelines under Article 4(5) of the BRRD about the criteria in Article 4(1) of the BRRD and, only after some experience is acquired in the application of the Guidelines, prepare draft regulatory technical standards (RTS) to specify the above mentioned criteria (Article 4(6) of the BRRD). Further, Article 4(11) of the BRRD requires the EBA to develop draft implementing technical standards (ITS) to specify uniform formats, templates and

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

Article 4(8) of the BRRD permits in specified cases the granting of waivers from requirements relating to recovery and resolution planning. Article 4(10) of the BRRD specifies that certain institutions shall have individual recovery plans and resolution plans. These are ‘institutions subject to direct supervision by the European Central Bank pursuant to Article 6(4) of Council Regulation (EU) No 1024/2013 or constituting a significant share in the financial system of a Member State’. An institution shall be considered as constituting a significant share of a Member State’s financial system if the total value of its assets exceeds €30,000,000,000 or the ratio of its total assets over GDP of the Member State of establishment exceeds 20% unless the total value of its assets is below €5,000,000,000.

Content

The BRRD enumerates a set of criteria to which authorities must have regard in determining whether simplified obligations shall apply. Authorities should have regard to all of these criteria in the order specified in the Guidelines. Some of the criteria play a distinctive role only in circumstances when the criteria which are the first in order against which institutions are to be assessed (size, inter-connectedness, complexity) do not conclude the analysis for the institution concerned in an unambiguous manner.

The Guidelines are intended to support authorities in exercising judgement as regards the application of each of the criteria and set out indicators for the purposes of applying the criteria. A number of the indicators are ‘mandatory’ and have been assigned to specific criterion. Institutions should be assessed against these indicators.

In addition, when applying the criteria, authorities may assess institutions against any of the ‘optional’ indicators listed in Annex 2 of the Guidelines. The list of optional indicators includes all of the mandatory indicators in order that authorities may use the indicators in relation to criteria other than the criterion to which the indicator has been assigned (e.g. so the indicators of ‘total deposits’ and ‘total covered deposits’ could be considered, for example, in relation to ‘nature of business’ criterion as well as being required to be considered in relation to ‘scope and complexity of activities’ criterion).

In selecting and applying the optional indicators, authorities should choose those indicators relevant to the institution, or category of institution (e.g. credit institution or investment firm), in question. Some of the optional indicators may be relevant to two or more of the criteria and institutions may be assessed against these indicators wherever authorities consider it relevant for determining whether simplified obligations should apply.

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

As the assessment for the purposes of Article 4(1) of the BRRD generally relates to the systemic significance of the institution, many of the indicators are the same as those included in the EBA's draft Guidelines on the criteria to determine the conditions of application of Article 131(3) of Directive 2013/36/EU (CRD) in relation to the assessment of other systemically important institutions (O-SIIs).⁴ However, some indicators are included in these Guidelines which do not appear in the Guidelines on the assessment of O-SIIs. These have been included in light of the specific purpose of the Guidelines which is to support the assessment of the impact of the failure of an institution, even where its systemic relevance is not evident, for the purposes of determining the appropriate content and details of recovery plans, resolution plans and resolvability assessments, the frequency for updating the plans, and the information required from institutions for specified purposes (see Article 4(1)(a) to (d) of the BRRD).

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

In terms of the criteria:

Size is the first criterion for authorities to consider.

As part of the assessment of size, authorities should consider the ongoing international⁵ and European⁶ work to identify globally systemically important financial institutions (G-SIFI) and other systemically important financial institutions (O-SIFI). Where institutions have been internationally recognised as systemically important, it is assumed that an assessment has been conducted already on the potential impact of their failure and that the potential impact has been determined to be significant. Accordingly it is not appropriate to apply simplified obligations to such institutions. For other institutions it is clear that the larger the institution the more likely it is that its failure and subsequent winding up under normal insolvency proceedings would cause disruption to the financial markets, to other institutions, to funding conditions, or the wider economy and the less likely it is that simplified obligations would be appropriate.

The next criterion for authorities to consider is the **interconnectedness** of the institution, including to other institutions and entities within its group (if relevant) and to other institutions and market participants. The more interconnected an institution is with others (for instance, as a

⁴ The Consultation Paper on the draft Guidelines is available here: <https://www.eba.europa.eu/documents/10180/760486/EBA-CP-2014-19+%28CP+on+GL+on+the+criteria+for+assessment+of+O-SIIs%29.pdf>.

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

⁶ The EBA's draft technical standards and Guidelines for the identification of global systemically important financial institutions are available here: <http://www.eba.europa.eu/regulation-and-policy/own-funds/global-systemically-important-institutions-g-sii->. See footnote 4 for the Consultation Paper on the draft Guidelines on the assessment of O-SIIs.

result of interbank exposures) the more likely it is that its financial distress and subsequent winding up under normal insolvency proceedings may materially increase the likelihood of distress of other institutions, taking account of financial, operational and contractual links. For institutions providing payment, settlement and clearing services it is likely that the failure and winding up of an institution under normal insolvency proceedings would impact adversely the service receiver's ability to perform its business activities as the continuity of service provision would be disrupted and substitute service providers may not be available. Therefore greater interconnectedness is likely to imply that simplified obligations will be less appropriate particularly as more detailed information is likely to be needed (for example, to assess fully the implications of recovery measures and resolution actions for the institution concerned that may affect relationships with different counterparties in order to minimise adverse impacts on financial stability).

Authorities must consider the **scope and complexity of activities** conducted by an institution, to make an assessment of the potential effects of an institution's failure and subsequent winding up under normal insolvency proceedings. The assessment should involve identifying the economic functions performed by the institution, including their scale and determining the criticality of the functions for the financial markets, other institutions and the wider economy and their substitutability. For example, where there are no willing substitutes capable of performing effectively the institution's functions within the market, an institution's failure and its subsequent winding up under normal insolvency proceedings may have a significant negative impact on the financial markets, on other institutions, on funding conditions or the wider economy, in which case simplified obligations are less likely to be appropriate.

Authorities must also consider the **risk profile** of an institution. To assess this criterion, the authorities should use outcomes of the supervisory review and evaluation process (SREP) performed in accordance with Article 97 of Directive 2013/36/EU and further specified in the EBA's draft Guidelines for common procedures and methodologies for SREP.⁷ The more risk an institution takes, the more it may lead to significant exposures that could result in its financial distress potentially necessitating recovery actions and, should they prove unsuccessful, resolution. In such cases, authorities may determine that an institution should be subject to full obligations in order to ensure that authorities have sufficient information to ensure that adequate recovery and resolution plans are in place.

The **legal status** criterion refers to the regulatory permissions and authorisations granted to the institution, in particular in relation to the use of advanced models for the calculation of own funds requirements.

The **nature of the business** of an institution is another criterion which authorities must assess in order to determine the impact of an institution's failure and subsequent winding up under normal insolvency proceedings. The geographical dispersal of an institution's activities and the structure

⁷ The draft Guidelines are available here: <http://www.eba.europa.eu/documents/10180/748829/EBA-CP-2014-14+%28CP+on+draft+SREP+Guidelines%29.pdf>.

of the operations within the banking market with regard to its organisation and concentration in terms of the market it serves (including as regards individual business lines and core business services) may affect whether an institution can be wound up under normal insolvency proceedings without significant negative effects on the markets in which it operates, on other institutions, on funding conditions or on the wider economy. The more complex the structure and the operations of an institution and/or its market share, the less likely it is that simplified obligations will be appropriate.

The **shareholding structure** must be considered as it might affect the availability of certain recovery and resolution options. For instance, the specific characteristics of the ownership structure (e.g. highly concentrated or dispersed) and the interconnectedness of the institution within a group may affect the extent to which it can be wound up under normal insolvency proceedings without causing disruption to other group entities and to the market as a whole.

Authorities must also assess the **legal form** of an institution to understand whether it is feasible for the institution to be wound up under normal insolvency proceedings.

Finally, authorities must consider the **participation of an institution in an institutional protection scheme (IPS) or other cooperative mutual solidarity systems**.

IPSs and cooperative mutual solidarity systems between institutions aim to protect the system as a whole. For most schemes there are central institutions (affiliation banks) that are responsible within the schemes for clearing, treasury and other services for affiliated institutions; these may be critical functions for the schemes. Their failure would cause serious deterioration in affiliated institutions' economic condition and would disturb centrally performed services. This would indicate that simplified obligations are not appropriate for these institutions.

In cases where the size of the participants in a scheme varies substantially, the largest institutions of the scheme may put the IPS and its other members at risk or lead to contagion risk should they encounter serious financial difficulties, i.e. the other participants of the scheme would have to cover the losses of this institution, which could worsen their own situation. This risk is diminished if the aid funds are sufficient in size. For such institutions that could cause the failure of the whole IPS or if they meet other criteria within the Guidelines simplified obligations are not appropriate.

4. Draft EBA Guidelines on the application of simplified obligations under Article 4 of the Bank Recovery and Resolution Directive (BRRD)

In between the text of the draft Guidelines that follows, further explanations on specific aspects of the proposed text are occasionally provided, which either offer examples or provide the rationale behind a provision, or set out specific questions for the consultation process. Where this is the case, this explanatory text appears in a framed text box.

Status of these guidelines

This document contains guidelines issued pursuant to Article 16 of 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). In accordance with Article 16(3) of the EBA Regulation, competent authorities and financial institutions must make every effort to comply with these guidelines.

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. The EBA therefore expects all competent authorities and financial institutions to whom guidelines are addressed to comply with guidelines. Competent authorities to whom guidelines apply should comply by incorporating them into their practices as appropriate (e.g. by amending their legal framework or their supervisory processes), including where guidelines are directed primarily at institutions.

Reporting requirements

In accordance with Article 16(3) of the EBA Regulation, competent authorities must notify the EBA as to whether they comply or intend to comply with these guidelines, or otherwise with reasons for non-compliance, by **dd.mm.yyyy**. In the absence of any notification by this deadline competent authorities will be considered by the EBA to be non-compliant. Notifications should be sent by submitting the form provided in Section 5 to compliance@eba.europa.eu with reference '**EBA/GL/201x/xx**'. Notifications should be submitted by persons with appropriate authority to report compliance on behalf of their competent authorities.

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

Title I - Subject matter, scope and definitions

1. These Guidelines, referred to in Article 4(5) of Directive 2014/59/EU [BRRD] ('the Directive'), specify the criteria for assessing, in accordance with Article 4(1), the impact of an institution's failure and subsequent winding up under normal insolvency proceedings on financial markets, on other institutions and on funding conditions for the purposes of determining whether simplified obligations should apply to institutions. The Directive does not attribute a weighting to each of the criteria. For this reason the Guidelines do not attribute a weighting to the criteria or to the indicators set out in the Guidelines.
2. These Guidelines apply to competent authorities and resolution authorities in the sense of points (18) and (21) of Article 2(1) of the Directive. Competent authorities should assess institutions against the criteria for recovery planning purposes and resolution authorities should assess institutions against the criteria for resolution planning purposes, including for the purposes of conducting resolvability assessments. According to Article 4(2) of the Directive, competent authorities and, where relevant, resolution authorities shall make the assessment after consulting, where appropriate, the macroprudential authority. On the basis of the application of the criteria it is possible that a competent authority and a resolution authority in a Member State may choose to adopt a different approach to the application of the simplified obligations due to the differing purposes (i.e. recovery planning and resolution planning and resolvability assessments) for which the assessment is to be conducted by the authority concerned. In such cases, however, competent authorities and resolution authorities, in the spirit of cooperation, should strive to reach a consistent approach for the application of simplified obligations.
3. For the purposes of these Guidelines the definitions set out in the Directive shall apply. The definitions set out in Annex 1 shall also apply. If indicator values in accordance with Annex 1 are not available competent authorities and resolution authorities should use appropriate proxies. In this case the competent authorities and resolution authorities should ensure that those proxies are properly explained and correlate to the greatest extent possible with the definitions in Annex 1.

Title II- Requirements regarding the criteria for the assessment of application of simplified obligations

General principles

4. These Guidelines specify the criteria listed in Article 4(1) of the Directive by setting out a list of mandatory indicators against which institutions should be assessed by competent authorities and resolution authorities when determining whether it is appropriate for simplified obligations to be applied having regard to the specific criteria listed in Article 4(1) of the Directive. In addition, competent authorities and resolution authorities may assess institutions against any of the optional indicators listed in Annex 2. In selecting and applying the optional indicators, those indicators relevant to the institution, or category of institution

(e.g. credit institution or investment firm sharing similar characteristics for the purposes of the application of the criteria) should be chosen. The list of optional indicators includes all of the mandatory indicators in order that the authorities may use the indicators in relation to criteria other than, and in addition to, the criterion to which the indicator has been assigned.

5. This approach is intended to promote the convergence of practice between competent authorities and resolution authorities when assessing institutions against the criteria listed in Article 4(1) of the Directive whilst at the same time ensuring that the assessment can be conducted in a proportionate manner. Where competent authorities and resolution authorities take account of optional indicators, explanation should be provided to the EBA in the course of reporting on the application of the criteria in accordance with the implementing technical standards under Article 4(11) of the Directive for the purposes of developing regulatory technical standards according to Article 4(6) and submitting the report according to Article 4(7) of the Directive.
6. The indicators provided in these Guidelines should be used by each competent authority and resolution authority to assess the institutions established within a Member State, either on a case by case basis or by categorising them (for example, by categorising them on grounds of size or SREP classification⁸), that may be subject to simplified obligations.
7. Institutions should be assessed against each of the criteria listed in Article 4(1) of the Directive and the mandatory indicators set out in these Guidelines in the order provided in these Guidelines. It is possible that, having regard to one of the criteria (e.g. size or interconnectedness) it is clear that an institution's failure and winding up under normal insolvency proceedings could have a significant negative effect on financial markets, on other institutions, on funding conditions, or on the wider economy in which case that will be determinative (i.e. full obligations should be applied) and it is not necessary for the relevant authority to conduct a detailed assessment of the institution against the other criteria and the mandatory indicators set out in these Guidelines. In other cases, the assessment of the institution against individual criterion may not be determinative but, taken together with the results of the assessment of the institution against several or all of the criteria, the institution's failure and orderly winding up under normal insolvency proceedings may be determined to have a significant negative effect.
8. These Guidelines do not attribute a weighting to each of the criteria or the indicators. This ensures that the criteria are capable of being applied in a flexible way to the full range of institutions falling within the scope of the Directive.
9. Competent authorities and resolution authorities should have particular regard to an institution's designation as a G-SII or O-SII by virtue of Article 131 of Directive 2013/36/EU when applying the criteria listed in Article 4(1) of the Directive, as evidence of their systemic

⁸ As set out in the EBA's draft Guidelines for common procedures and methodologies for the supervisory review and evaluation process under Article 107(3) of Directive 2013/36/EU which are available here: <http://www.eba.europa.eu/documents/10180/748829/EBA-CP-2014-14+%28CP+on+draft+SREP+Guidelines%29.pdf>.

relevance according to recital (14) of the Directive.

10. Institutions designated as G-SII or O-SII should be subject to full obligations. Nevertheless, these Guidelines should not be construed as an indication that institutions which have not been designated as G-SIIs or O-SIIs are automatically qualifying for simplified obligations under Article 4 of the Directive; instead an assessment under these Guidelines should always be carried out for those institutions to determine whether simplified obligations are appropriate.
11. Competent authorities and resolution authorities are permitted to apply different or significantly reduced information requirements for the purposes of recovery and resolution planning in relation to institutions that are determined to be eligible for simplified obligations; authorities may choose to apply different sets of simplified obligations to different categories of institution. The indicators set out in these Guidelines may be used by competent authorities and resolution authorities for the purposes of informing the nature of the simplified obligations to be applied to the institution(s) in question.
12. Competent authorities and resolution authorities should ensure that they are kept informed of changes to an institution's business or structure relevant to the criteria in order to ensure that the application of full or simplified obligations remains appropriate. The simplified regime should be revoked when the basis for the application of the simplified obligations is no longer met and it is determined that an institution's failure and winding up under normal insolvency proceedings would be likely to have a significant negative effect on financial markets, on other institutions, on funding conditions or on the wider economy.

Explanatory text for consultation purposes

An institution designated as a G-SII or O-SII should be subject to full obligations because, on the basis of the application of the relevant methodology for identifying G-SIIs and O-SIIs, it is clear that their failure and subsequent winding up under normal insolvency proceedings would be likely to have a significant negative effect. Therefore it is not necessary to conduct a detailed assessment of such institutions against the criteria listed in Article 4(1) of the Directive for the purposes of establishing whether their failure and winding up under normal insolvency proceedings would be likely to have a significant negative effect on financial markets, on other institutions, on funding conditions or on the wider economy.

Size

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

- (b) Total assets/Member State's GDP.

Interconnectedness

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

- (a) Interbank liabilities;
- (b) Interbank assets;
- (c) Debt securities outstanding;
- (d) Number of foreign subsidiaries and branches (to be broken down into subsidiaries and branches established in other Member States and in third countries);
- (e) Clearing, payment and settlement services provided to institutions and others.

Explanatory text for consultation purposes

A complex structure in which institutions and group entities are highly interdependent may make an institution more difficult to wind down in an orderly fashion under normal insolvency proceedings, in which case simplified obligations may not be appropriate.

An institution with a large amount of interbank exposures is interconnected to the degree that its failure would adversely impact the continuity of business operations at other institutions.

The more interconnected an institution, for example as regards the extent to which it provides services to other institutions, the greater the potential for disruptions to the financial system as a result of that institution's failure and subsequent winding up under normal insolvency proceedings.

For institutions providing payment, settlement and clearing services it is likely that winding up of the institution under normal insolvency proceedings will adversely impact the service receiver's ability to perform its business activities. The substitutability of services that the institution offers means the degree to which any of critical economic functions provided by the institution can be easily substituted by other market participants. If a critical activity cannot be easily substituted, the institution may be seen as systemic to the point that its failure under normal insolvency proceedings would have a significant negative effect on financial markets, on other institutions and or on funding conditions.

Information about interconnectedness and links to financial infrastructure, for example, will help inform the need for the contents of the resolution plan on the critical interdependencies and the options for preserving access to market infrastructure (Article 10(7)(k) and (l) of the Directive).

Scope and complexity of activities

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

- (a) Value of OTC derivatives (notional);
- (b) Cross-jurisdictional liabilities;
- (c) Cross-jurisdictional claims;
- (d) Total deposits;
- (e) Total covered deposits.

Explanatory text for consultation purposes

Lending and borrowing in wholesale markets may be considered critical if liquidity and funding strains may occur for one or more borrowers before alternative sources of credit can be found. This is particularly the case if the failing institution had been a major provider of liquidity for wholesale markets and cannot be replaced before liquidity strains emerge.

The acceptance of deposits and the maintenance of deposit accounts and close substitutes (e.g. short-term retail notes) may be critical regardless whether they are covered by a deposit guarantee scheme (DGS) or are subject to depositor preference.

It is essential to ensure depositor protection during resolution. In particular continuous access to deposits in transaction (e.g. current) accounts is critical for the smooth settlement of day-to-day financial transactions as disruptions affect the ability to execute payments within the real economy.

Risk profile

16. Competent authorities and resolution authorities, to the extent possible and where relevant, should consider the outcomes of SREP performed in accordance with Article 97 of Directive 2013/36/EU and further specified in the EBA Guidelines for common procedures and methodologies for SREP when assessing institutions against the criterion of risk profile. The following should be taken into account:

- (a) SREP scores assigned to capital adequacy, liquidity adequacy, internal governance and institution-wide controls assessments and overall SREP score assigned on the basis of EBA Guidelines for common procedures and methodologies for SREP.

Explanatory text for consultation purposes

The SREP takes account of a variety of risk measures an institution faces and gives a score which evaluates whether: (a) the institution's risk profile raises concerns; (b) the composition and quantity of own funds is adequate; (c) the institution's business model is viable and its strategy is sustainable; (d) the institution's internal governance and institution-wide control arrangements are appropriate to the business model, size, complexity and risk profile of the institution; (e) the institution has adequate liquidity arrangements.

Legal status

17. Competent authorities and resolution authorities, when assessing institutions against the criterion of legal status, should take the following into account:
- (a) Regulatory permissions and authorisations, in particular in relation to the use of advanced models for the calculation of own funds requirements for credit, market and operational risk.

Nature of business

18. Competent authorities and resolution authorities should assess an institution against the following when determining whether the criterion of the nature of the business of an institution means that its failure and subsequent winding up under normal insolvency proceedings would be likely to have a significant negative effect on financial markets, on other institutions or on funding conditions:
- (a) The overall institution's business model, its viability and the sustainability of the institution's strategy based on the outcomes of the business model analysis performed as part of SREP according to the EBA Guidelines for common procedures and methodologies for SREP. For this purpose authorities may use the SREP score assigned to business model and strategy.
 - (b) The institution's position in the jurisdictions in which it operates in terms of the critical functions and core business lines offered in each jurisdiction and the market share of the institution (concentration).

Explanatory text for consultation purposes

Banking systems may vary with regard to organisation and composition in different countries. In some countries there might be a highly diversified banking system, i.e. a relatively large number of individual institutions offering banking services. In other countries, the structure might be rather concentrated with a relatively small number of institutions. In diversified banking systems it could be possible that a larger proportion of the aggregated and cumulated banking business could qualify for simplified obligations than in concentrated banking systems.

Shareholding structure

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

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

Explanatory text for consultation purposes

The ownership structure, and the interconnectedness of the institution within a group, may affect the availability of certain recovery options to the extent to which it can be wound up under normal insolvency proceedings without causing disruption of other group entities and to the market as a whole. For example, there could be difficulties with gathering enough shareholders to make a general assembly decision or shareholder structure may have particular implications in relation to the availability of recovery actions.

Legal form

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

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

Membership of an IPS or other cooperative mutual solidarity systems

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

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

Title III- Final Provisions and Implementation

- 22. These Guidelines apply from [xxxx xxx 2015]. The EBA will review the Guidelines from time to time.
- 23. Taking into account, where appropriate, experience acquired in the application of the Guidelines, the EBA shall develop draft regulatory technical standards to specify the criteria listed in Article 4(1) of the Directive, for assessing, in accordance with that paragraph, the impact of an institution's failure on financial markets, on other institutions, and on funding conditions. These draft regulatory technical standards shall be submitted to the Commission by 3 July 2017 in accordance with Article 4(6) of the Directive.

Questions:

- 1. Do you agree with the mandatory and optional indicators listed in the Guidelines for the criteria?**
- 2. Do you consider the level of detail in the Guidelines appropriate?**
- 3. Do you agree that the lists of mandatory and optional indicators are sufficient to take account of the full range of business models of investment firms?**

Please specify your answer for each criterion separately and elaborate, where possible, on additional indicators that may be relevant.

Annex 1 – Definitions⁹

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

⁹ If indicator values in accordance with Annex 1 are not available competent authorities and resolution authorities should use appropriate proxies. In this case the competent authorities and resolution authorities should ensure that those proxies are properly explained and correlate to the greatest extent possible with the definitions in Annex 1.

Annex 2 – Optional indicators¹⁰

Optional indicator

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

¹⁰ All of the mandatory indicators assigned to individual criterion are included in the list of optional indicators. Competent authorities and resolution authorities may take these into account, in addition, when assessing institutions against other criteria (i.e. those criteria in relation to which the relevant indicator has not been assigned as a mandatory indicator).

Optional indicator

The type of regulatory permissions and authorisations (e.g. investment firm or a credit institution; the use of advanced models for the calculation of own funds requirements for credit, market and operational risk)

Private sector loans to domestic recipients

Private sector loans to recipients in a specific region

Mortgage loans to recipients in the EU

Mortgage loans to domestic recipients

Retail loans to recipients in the EU

Retail loans to domestic recipients

SREP score (overall)

SREP scores assigned to capital adequacy, liquidity adequacy, internal governance and institution-wide controls assessments

Regulatory permissions and authorisations, in particular in relation to the use of advanced models for the calculation of own funds requirements for credit, market and operational risk

The overall institution's business model, its viability and sustainability of the institution's strategy based on the outcomes of the business model analysis performed as part of SREP according to the EBA Guidelines for common procedures and methodologies for SREP. For this purpose authorities may use the SREP score assigned to business model and strategy

The institution's position in the jurisdictions in which it operates in terms of the critical functions and core business lines offered in each jurisdiction and the market share of the institution (concentration)

Whether shareholders are concentrated or dispersed, in particular taking account of the number of qualified shareholders and the extent to which the shareholding structure may impact the availability of certain recovery actions for the institution and the resolution tools for the resolution authority

The structure of an institution in terms of assessing whether the institution is part of a group and, if so, whether the group has a complicated or simple structure having regard to financial and operational inter-dependencies

The type of the incorporation of the institution into a private limited company, a limited liability company or any other type of company defined within national law

The function of the institution in the system as participant or central institution or as provider of critical functions to other participants, or potentially as a party exposed to the scheme's concentration risk

The size of the guarantee fund relative to the institution's total funds (IPS and other mutual solidarity systems only)

The type of the mutual solidarity system and its risk management policies and procedures

The degree of interconnectedness to other IPS participants

5. Accompanying documents

5.1 Draft Cost- Benefit Analysis / Impact Assessment

Introduction

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

This section of the Consultation Paper presents the draft Impact Assessment (IA) with cost-benefit analysis of the provisions included in the Guidelines described in this Paper. Given the nature of the Guidelines, the IA is mostly high-level and qualitative in nature.

Problem definition

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

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

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

- (a) Whether the criterion of the membership of an IPS or other cooperative mutual solidarity system of an institution means that its failure and subsequent winding up under normal insolvency proceedings would be likely to have a significant negative effect on financial markets, on other institutions or on funding conditions;
- (b) Asymmetric information between authorities in different Member States when there is a need for cooperation in cross-border cases;

- (c) Uneven playing field for institutions in the EU, i.e. different treatment of various institutions with the same characteristics or of various institutions belonging to the same cross-border groups, due to different supervisory/resolution practices;
- (d) Regulatory arbitrage, i.e. institutions may cease their operations in Member States where the regulatory framework is stricter and/or less predictable and relocate to Member States with more favourable regulatory frameworks.

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

Objectives

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

Baseline scenario

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

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

¹² That is 1 billion DKK.

Assessment of the technical options

Both competent authorities and resolution authorities have a role to play in the determination that an institution is eligible for simplified obligations for relevant purposes. The authorities also need to monitor the characteristics of the institutions over time and revise the decisions if necessary (e.g. to reinstate full obligations where an institution's business has grown to such a scale that it is no longer appropriate for simplified obligations to apply).

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

The assessment considers the following options:

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

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

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

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

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

Option B proposes the following framework:

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

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

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

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

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

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

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

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

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

Table 1 Potential benefits and cost associated with the options

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

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

5.2 Overview of questions for Consultation

Respondents are invited to comment in particular the following questions.

Questions:

1. Do you agree with the mandatory and optional indicators listed in the Guidelines for the criteria?

2. Do you consider the level of detail in the Guidelines appropriate?

3. Do you agree that the lists of mandatory and optional indicators are sufficient to take account of the full range of business models of investment firms?

Please specify your answer for each criterion separately and elaborate, where possible, on additional indicators that may be relevant.