

EBA/CP/2021/12

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Consultation Paper

Guidelines for institutions and resolution authorities on
improving resolvability

Contents

1. Responding to this consultation	3
2. Executive Summary	4
3. Background and rationale	6
4. Consultation Paper on Guidelines for Institution and Resolution Authorities on Improving Resolvability	Error! Bookmark not defined.
1. Compliance and reporting obligations	2
2. Subject matter, scope and definitions	3
3. Implementation	4
4. Guidelines on Improving resolvability	5
4.1 Minimum requirements relating to Structure and operations as per article 27 DR 2016/1075	5
4.1.1 Operational continuity	5
4.1.2 Access to FMIs	10
4.1.3 Governance in resolution planning	13
4.2 Minimum requirements relating to Financial resources as per Article 28 of DR 2016/1075	16
4.2.1 Funding and liquidity in resolution	16
4.3 Minimum requirements relating to Information systems as per Article 29 of DR 2016/1075	19
4.3.1 Information systems testing	19
4.4 Minimum requirements relating to Cross-border issues as per Article 30 of DR 2016/1075	19
4.4.1 Contractual recognition	19
4.5 Resolution implementation	20
4.5.1 Bail-in exchange mechanic	21
4.5.2 Business Reorganisation	22
4.5.3 Governance in resolution execution	24
4.5.4 Communication	25
Annex 1 – Resolution timeline	27
Annex 2 – Resolvability assessment template (see separate document)	28
Annex 3: list of the minimum fields to be included in the repository of contracts	29
5. Accompanying documents	31
5.1 Overview of questions for consultation	35

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 5.1.

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 17 June 2021. 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 (EU) 1725/2018 of the European Parliament and of the Council of 23 October 2018. Further information on data protection can be found under the Legal notice section of the EBA website.

2. Executive Summary

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

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

These guidelines aim to implement existing international standards on resolvability and take stock of the best practices so far developed by EU resolution authorities on resolvability topics. In particular, these guidelines set-out requirements to improve resolvability in the areas of Operational Continuity in Resolution, Access to FMI, Funding and liquidity in resolution, bail-in execution, business reorganisation and communication.

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

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

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

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

These guidelines are published for consultation for a period of three months, and a public hearing will be organised.

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

Next steps

Following the consultation, the aim is to publish the final guidelines by 1H 2021. The institutions and authorities in scope of these guidelines should comply in full by 1 January 2024.

3. Background and rationale

1. Resolvability assessments support the strengthening of institutions, groups or resolution groups' resolvability preparedness in case they are found to be failing or likely to fail, by addressing any identified impediments to resolution. The assessment of resolvability is an essential part of resolution planning.
2. Resolution authorities are responsible for resolution planning and, eventually, for the orderly resolution of institutions. As per Articles 15 and 16 of the Bank Recovery and Resolution Directive², they are expected to assess an institution or group's resolvability based on the following steps: (i) an assessment of the feasibility and credibility of the liquidation of the institution or group under normal insolvency proceedings; (ii) the selection of a preferred resolution strategy for assessment; (iii) the assessment of the feasibility and credibility of the chosen resolution strategy.
3. In line with the EBA objectives on the topic of resolution³ and the priorities set in the EBA 2020 Work Programme⁴, this document aims to specify steps that institutions, for which the preferred resolution strategy is not liquidation, should take to improve their resolvability.
4. These guidelines are based on existing international standards as set out by the Financial Stability Board⁵ and leverage the current practices in place in the EU, in particular within the Banking Union, following the specifications of the EBA Regulatory Technical Standards (RTS) on resolution planning.⁶
5. The BRRD requires that the assessment of resolvability should take into account the matters specified in Articles 15(2), 16(2) of BRRD and in Section C of the Annex to the Directive. The EBA RTS on resolution planning⁷ specify that impediments should be identified at least in the following categories
 - a. structure and operations;
 - b. financial resources;
 - c. information;
 - d. cross-border issues;

² Directive 2014/59/EU of the European Parliament and of the Council of 15 May 2014 establishing a framework for the recovery and resolution of credit institutions and investment firms, hereinafter 'BRRD'.

³ Articles 8(ab), 25(2) of Regulation 1093/2010.

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

⁵ [Guidance on arrangements to support operational continuity in resolution; Guidance on continuity of access to financial market infrastructures \(FMIs\) for a firm in resolution; Funding strategy elements of an implementable resolution plan; Principles on bail-in execution.](#)

⁶ Commission Delegated Regulation (EU) 2016/1075.

⁷ Article 26(3) of Commission Delegated Regulation (EU) 2016/1075.

- e. legal issues
6. These guidelines further specify this categorisation, breaking down impediments as follows and providing a template for authorities to monitor progress.
- a. Structure and operations
 - i. Operational continuity
 - ii. Access to FMIs
 - iii. Governance in resolution planning
 - b. Financial resources:
 - iv. Loss absorbing capacity (MREL)
 - v. Funding and liquidity in resolution
 - c. Information
 - vi. Management information systems
 - vii. Information systems for valuation
 - d. Cross-border issues:
 - i. Cross border recognition
 - ii. Coordination
 - e. Resolution implementation
 - i. Bail-in execution
 - ii. Restructuring
 - iii. Governance
 - iv. Communication
 - f. Other institution specific impediments (e.g. legal issues)
7. Please note that not all impediments are covered in these guidelines as those are either sufficiently covered elsewhere in the regulatory framework or are planned to be covered in future updates of the guidelines; table 1 provides a mapping of which EU text or international standards covers which impediment and which impediments are specified in these guidelines.
8. These guidelines aim to complement the existing legal framework by implementing international standards recently made available and clarify what resolvability means for institutions as well as
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for authorities. The table below provides a legal mapping of how impediments are already identified in BRRD annex C and in the EBA RTS on the content of resolution plans⁸, what existing legal requirements already cover certain impediments (e.g. Article 45(e), (f) and (g) of BRRD2 for MREL), which impediments are covered in this version of the guidelines and which are not and to which international standards they correspond.

Table 1: Legal mapping

Impediments	Relevant FSB Guidelines	BRRD Annex Section C	Other EU references	EBA Resolvability Guidelines	
Structure and operations	<i>Operational continuity</i>	Guidance on arrangements to support operational continuity in resolution	Points (1) to (6), (10), (11), (16), (18), (19)	Art. 22(4) and 27 Commission Delegated Regulation 2016/1075 Commission Implementing Regulation 2018/1624 Section 4 EBA Guidelines on outsourcing arrangements (EBA/GL/2019/02) Title VI EBA Guidelines on internal governance (EBA/GL/2017/11) Section 3.7 EBA Guidelines on ICT and security risk management (EBA/GL/2019/04)	Section 4.1.1
	<i>Access to FMIs</i>	Guidance on continuity of access to financial market infrastructures (FMIs) for a firm in resolution	Point (7)	Art. 22(4)(c) Commission Delegated Regulation 2016/1075 Commission Implementing Regulation 2018/1624	Section 4.1.2
Financial resources	<i>Loss-absorbing capacity (MREL)</i>	TLAC Principles and Term Sheet Review of the technical implementation of the TLAC standard	Point (3), (13), (15) (17)	Art. 45e to 45g BRRD; Art. 92a CRR Art. 28(1) and (2) Commission Delegated Regulation 2016/1075 Art. 45i BRRD; Draft ITS on disclosure and reporting of MREL and TLAC	Not covered in these guidelines
	<i>Funding and liquidity in resolution</i>	Guiding principles on the temporary funding needed to support the orderly resolution of a G-SIB	Points (3), (14) to (15)	Art. 22(5), 28(3) and 29(2) Commission Delegated Regulation 2016/1075	Section 4.2.1

⁸ Art. 22 of Commission Delegated Regulation (EU) 2016/1075.

Impediments	Relevant FSB Guidelines	BRRD Annex Section C	Other EU references	EBA Resolvability Guidelines	
	Funding strategy elements of an implementable resolution plan				
	<i>Management information systems (MIS)</i>	Guidance on arrangements to support operational continuity in resolution	Points (8) to (12)	Art. 11 BRRD and Commission Implementing Regulation 2018/1624 Art. 22(3) and 29 Commission Delegated Regulation 2016/1075	Section 4.1.1
Information systems	<i>Information systems for valuation</i>	Guidance on arrangements to support operational continuity in resolution Principles on bail-in execution (Section on Valuation)	Point (9), (25)	Art. 29 Commission Delegated Regulation 2016/1075 Chapter 10 EBA Handbook on valuation for purposes of resolution	Section 4.3.1
Cross-border issues	<i>Cross-border recognition</i>	Principles of cross-border effectiveness of resolution actions Section 5 of Funding strategy elements of an implementable resolution plan	Point (20)	Art. 55 and 71a BRRD Art. 30, 43 and 44 Commission Delegated Regulation 2016/1075 EBA draft RTS on contractual recognition of stay powers (EBA/CP/2020/04) Commission Delegated Regulation 2016/1712 EBA draft RTS and ITS on impracticability of contractual recognition of bail-in (EBA/RTS/2020/13 EBA/ITS/2020/09)	Section 4.3.1
	<i>Coordination</i>			Art. 13, 45h and 88 BRRD; Chapter VI Delegated Regulation 2016/1075.	
Resolution Implementation	<i>Bail-in execution</i>	Principles on bail-in execution	Points (13) to (16), (21), (24) to (28)	Art. 37-41 DR 2016/1075 EBA Handbook on valuation for purposes of resolution	Sections 4.5.1, 4.5.2

Impediments	Relevant FSB Guidelines	BRRD Annex Section C	Other EU references	EBA Resolvability Guidelines
<i>Business reorganisation and separability</i>		Points (6), (16), (18), (22) and (23)	Art. 25(3) and DR 2016/1075; EBA guidelines on measures to reduce or remove impediments to resolvability (EBA/GL/2014/11); DR 2017/867, DR2016/1400	Sections 4.5.3, 4.5.4
<i>Governance and communication</i>		-	Art. 22(6) Commission Delegated Regulation 2016/1075	Sections 4.5.5, 4.5.6
Other institution-specific impediments (legal issues)			Art 31. Commission Delegated Regulation 2016/1075	Not covered in these guidelines

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

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



4. Draft Guidelines

EBA/GL-REC/20XX/XX

DD Month YYYY

Draft Guidelines

Guidelines for Institutions and Resolution Authorities on Improving Resolvability

1. Compliance and reporting obligations

Status of these guidelines

1. This document contains guidelines issued pursuant to Article 16 of Regulation (EU) No 1093/2010⁹. In accordance with Article 16(3) of Regulation (EU) No 1093/2010, competent authorities and financial institutions must make every effort to comply with the guidelines.
2. Guidelines set the EBA view of appropriate supervisory practices within the European System of Financial Supervision or of how Union law should be applied in a particular area. Competent authorities as defined in Article 4(2) of Regulation (EU) No 1093/2010 to whom guidelines apply should comply by incorporating them into their practices as appropriate (e.g. by amending their legal framework or their supervisory processes), including where guidelines are directed primarily at institutions.

Reporting requirements

3. According to Article 16(3) of Regulation (EU) No 1093/2010, 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 **[2 months after publication of translation of the guidelines]**). In the absence of any notification by this deadline, competent authorities will be considered by the EBA to be non-compliant. Notifications should be sent by submitting the form available on the EBA website to compliance@eba.europa.eu with the reference 'EBA/GL/202/xx'. Notifications should be submitted by persons with appropriate authority to report compliance on behalf of their competent authorities. Any change in the status of compliance must also be reported to EBA.
4. Notifications will be published on the EBA website, in line with Article 16(3).

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).

2. Subject matter, scope and definitions

Subject matter

5. These guidelines specify the actions that institutions¹⁰, and resolution authorities should take to improve resolvability of institutions, groups or resolution groups in the context of the resolvability assessment as per Articles 15 and 16 of Directive 2014/59.

Addressees

6. These guidelines are addressed to financial institutions set out in paragraph 1 of Article 4 of Regulation (EU) No 1093/2010 that are entities within the scope of Directive 2014/59/EU as set out in Article 1 of that Directive (“institutions”) and to resolution authorities as defined in point v of Article 4(2) of Regulation (EU) No 1093/2010 (“authorities” or “resolution authorities”).

Scope of application

7. These guidelines apply in order to increase the resolvability of institutions, groups and resolution groups and to, therefore, enhance and facilitate the work of resolution authorities as per the requirements established in Articles 15 and 16 of Directive 2016/59/EU and in Commission Delegated Regulation (EU) 2016/1075, except for cases whereby such requirements are specific to the resolution tool used (e.g. bail-in playbook).
8. These guidelines do not apply to institutions which are subject to simplified obligations for resolution planning in accordance with Article 4 of Directive 2014/59/EU, but resolution authorities may apply these guidelines as appropriate in whole or in part to these institutions.
9. These guidelines do not apply to institutions whose resolution plan provides that they are to be wound up in an orderly manner in accordance with the applicable national law, although resolution authorities may apply these guidelines as appropriate in whole or in part to these institutions. In the case of a change of strategy, in particular from liquidation to resolution then the guidelines should apply, in full, no later than 3 years as from the date of the approval of the resolution plan including the new resolution strategy.
10. For institutions that are not part of a group subject to consolidated supervision pursuant to Articles 111 and 112 of Directive 2013/36/EU, these guidelines apply at the individual level.
11. For institutions that are part of a group subject to consolidated supervision pursuant to Articles 111 and 112 of Directive 2013/36/EU, these guidelines apply at the level both of the resolution entities and of its subsidiaries (“resolution group level”).

¹⁰ Art. 2.(23) of Directive 2014/59/EU

3. Implementation

Date of application

12. These guidelines apply from **1 January 2024**, therefore institutions and resolution authorities should incorporate the requirements, guidance and contents of these guidelines in their internal procedures in order to comply in full with the guidelines by no later than 1 January 2024. In particular, when reviewing the assessment of the resolvability of institutions, groups and resolution groups.

4. Guidelines on Improving resolvability

4.1 Minimum requirements relating to Structure and operations as per article 27 DR 2016/1075

4.1.1 Operational continuity

13. Institutions should have operational arrangements to ensure the continuity of services supporting critical functions (designated as “critical services”) and core business lines needed for the effective execution of the resolution strategy and any consequent restructuring (designated as “essential services”) – together “relevant services” – and access to the operational assets and staff that are necessary upon entry into resolution and to facilitate business reorganisation.

14. Considering the different consecutive stages of the resolvability assessment in accordance with Article 23 of Delegated Regulation 2016/1075, when setting out the resolution strategy, the resolution authority should firstly take into account the structure, business model and the different service models used by a given institution or group and how they interact. As a next step, and without prejudice to their independence in choosing the service delivery model¹¹ which best suits their business, institutions should demonstrate, in line with the already identified preferred resolution strategy, that their service delivery model does in fact deliver resolvability.

Mapping of core business lines and critical functions

15. Institutions should identify relevant services, operational assets and staff and map them to critical functions, core business lines and legal entities (providing and receiving the services). The mapping exercise should include at least the information requested in accordance with Commission Implementing Regulation 2018/1624.¹²

16. The mapping should be comprehensive and regularly updated.

Contractual provisions

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

¹¹ e.g.: (i) provision of services by a division within a regulated legal entity; (ii) provision of services by an intra-group service company; and (iii) provision of services by a third-party service provider.

¹² See also EBA Guidelines on outsourcing arrangements (EBA/GL/2019/02) specifying the criteria to assess whether an outsourcing arrangement relates to a function that is critical or important at para. 31.

substantive obligations continue to be met, relevant contracts for services provided by intra-group and third-party providers ensure:

- a. no termination, suspension or modification on the grounds of resolution or business re-organisation;
- b. the transferability of the service provision to a new recipient either by the service recipient or the resolution authority because of resolution or restructuring;
- c. the support in transfer or termination occurring during resolution or restructuring for a reasonable period (e.g. 24 months) by the current service provider and under the same terms and conditions; and
- d. the continued service provision to a divested group entity during resolution or restructuring, for a reasonable period of time following divestment – e.g. 24 months.

18. Institutions may need to amend agreements, as appropriate, to ensure that relevant services can continue during the implementation of the business reorganisation plan¹³.

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

20. In case the institution is not able to put in place credible alternative measures, for third-country outsourced contracts the institution should pre-fund the contracts for six months, the liquidity should be ring-fenced, and made of high quality assets.

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

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

22. Institutions should document the relevant contractual arrangements for relevant services received from both third-party and intra-group entities¹⁴ and have clear parameters against

¹³ Article 52 BRRD.

¹⁴ Relevant services received from intra-group entities encompass: i) those provided by units/divisions within the same group legal entity (intra-entity), ii) those provided by another group legal entity.

which the performance of the relevant service provision can be monitored based on the SLAs, ensuring that resolution authorities have access to all information necessary to take appropriate decisions and to apply resolution powers. This should include details of the relevant service providers and recipients, the nature of service, its pricing structure (or an estimate of the cost for in-house services), clear parameters (qualitative/quantitative), performance target (or equivalent for in-house services), any onward provision to other entities or sub-contracting to third-party providers, associated licences and substantive obligations under the contract (e.g. payment/delivery)¹⁵. Where recourse is made to relevant intra-entity services, the documentation should facilitate the identification of services and the draw-up of transitional service agreements, should this be required under the chosen resolution strategy.

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

- a. the institution's service mapping as described in paragraph 15 and 16, including the description of the nature of the services;
- b. relevant services, as a result of the analysis of (i) the materiality of the impact of interruption to the services, and (ii) their substitutability;
- c. the costs associated with the provision of the services (see also paragraph 31 and 32);
- d. the linkage to the contractual arrangements governing the relevant services and supporting resources (e.g. operational assets).

24. The service catalogue is expected to be searchable (i.e. the information should be easily retrieved according to criteria relevant for resolution purposes) and able to produce detailed reports on the different dimensions.

25. Institutions should have comprehensive and searchable repository of contracts servicing all relevant services - both in and out-sourced. The repository should be updated on a regular basis and accessible on a timely basis.¹⁶

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

Financial resources for ensuring operational continuity

27. Institutions should monitor the financial resources available for intra-group providers of relevant services and for ensuring the payment of third-party service providers. Financial

¹⁵ When the counterparty is located outside the EU, the bank should consider this circumstance when assessing the risks to operational continuity in resolution. In particular, in this case the bank should assess to what extent the law of an EU Member State effectively applies to the contract.

¹⁶ The specific fields to be provided in the contract repository are provided in annex 3.

resources should be sufficient to facilitate operational continuity of critical functions and core business lines in resolution, covering both stabilisation and restructuring phases.

28. Institutions should ensure that relevant service providers are financially resilient in resolution. Where relevant services are provided by an unregulated intra-group entity, the service recipient should ensure that the provider has adequate liquid resources segregated from other group assets at least equivalent to 50% of annual fixed overheads.¹⁷ Where relevant services are provided by an external entity, institutions should undertake adequate due diligence to assess the financial resilience of the third-party provider.¹⁸

Pricing structure

29. Institutions should ensure that cost and pricing structures for relevant services should be predictable, transparent, and set at arm's length. Where relevant, clear links should be established between the original direct cost of the service and the allocated one¹⁹. This serves the purposes of providing ex ante certainty on the costs at which services will continue to be provided in resolution and facilitating decision-making during the restructuring phase.
30. Institutions should ensure that no alteration of the cost structure for services should occur solely as a result of the entry into resolution of the service recipient. This arrangement supports the financial viability of an intra-group service provider on a standalone basis or ensures that the documentation could form the basis for an external contract if an entity that is providing a critical service is restructured in resolution.

Operational resilience and resourcing

31. Institutions should ensure that relevant services²⁰ should be operationally resilient and have sufficient capacity, in terms of human resources and expertise, to support both resolution and post-resolution restructuring.
32. With regard to how internal relevant service providers (both intra-group and intra-entity) can comply with the previous paragraph, institutions should have documented plans in place to help ensure that relevant roles remain adequately staffed in resolution, including: retention plans detailing measures that can be taken in the run-up to and during resolution to mitigate potential resignation of staff in relevant roles; succession plans ensuring that alternative staff with adequate skills and knowledge is available to fill relevant roles potentially left vacant in resolution; and arrangements to address risks associated with staff carrying out functions in more than one group entity, if relevant.

¹⁷ To be computed in line with Art. 1 of Commission Delegated Regulation 2015/488 as regards own funds requirements for firms based on fixed overheads.

¹⁸ See the approach delineated in Section 12.3 of EBA/GL/2019/02.

¹⁹ In other words, institutions should be able to explain how the costs of the service have been allocated internally.

²⁰ Regarding third party relevant service providers, they should be subject to due diligence in accordance with Section 12.3 of EBA/GL/2019/02.

Access to operational assets and contingency arrangements for key staff and know-how

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

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

Governance for operational continuity

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

36. Institutions should ensure that business continuity planning and contingency arrangements for relevant service providers take into account resolution related conditions and are appropriate to ensure that services continue to be provided in resolution²¹, without needing to rely on staff from business lines that may no longer be part of the same institution/group as a result of resolution.

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

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

²¹ See EBA/GL/2019/02 paras. 35 and 38; see also Section 3.7 of the EBA Guidelines on ICT and security risk management (EBA/GL/2019/04).

4.1.2 Access to FMIs

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

Identification of FMI relationships

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

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

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

42. Institutions should consider the actions, such as increased margin requirements or reductions in outstanding credit lines, that FMIs and FMI intermediaries would be likely to take, as well as in which circumstances and within which timeline (e.g. intraday or within a few days) these might be taken, and to which extent.

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

44. Additionally, institutions should identify requirements to contribute additional amounts to default or guarantee funds, to secure additional liquidity commitments, or to pre-fund part or all of payment and settlement obligations in the event of financial stress and in resolution. A reasonable estimate of the liquidity requirements they might face under different stress scenarios should be provided to the resolution authority, together with relevant granular data

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

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

on credit lines and their usage and the historical peak of (intraday) liquidity or collateral usage over a given time horizon.

Mapping and assessment of FMI relationships

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

Usage of FMIs and FMI intermediaries

48. Institutions should record transaction data on their relevant positions and usage of FMI service providers to be provided to the relevant resolution authority during contingency planning. Those records should be reviewed and updated whenever volumes or exposures processed or held with FMI service providers materially change.

Contingency planning

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

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

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

Customer portability

52. Institutions should identify requirements for customer portability and provide the related information as regards CCPs, per CCP and per segment in which they act as clearing member, in line with the relevant FMIs' processes and procedures. This encompasses information on the segregation regime and type of client accounts, and the number of clients under different account structures.

53. Institutions' resources and systems should allow to maintain up-to-date information which could be provided rapidly in resolution to ensure the smooth transfer of client positions at CCPs as well as client assets in CSDs. Such information should encompass a list of:

- a. clients for each omnibus account and the positions, margins and assets received as collateral per individual client within the omnibus account;
- b. client positions, margins and assets received as collateral per individual client; and
- c. individual client assets held at the CSD.

Information exchange and communication between authorities

54. Resolution authorities of FMI service users should seek to identify the relevant authorities of each provider of relevant FMI services and engage with them to discuss the impact of resolution on FMIs within their remit.

55. Resolution authorities should seek to have appropriate information sharing arrangements²⁵ in place that encompass also early risk warnings, between resolution and supervisory authorities of FMI service users and the relevant authorities of providers of relevant FMI services.

²⁵ Subject to applicable law on information sharing and confidentiality

4.1.3 Governance in resolution planning

56. Institutions should, without prejudice to the overall responsibility of the management body, appoint a member of the management body that is responsible for the (internal) work on resolution planning and to ensure the implementation of the resolvability work programme.

57. This member should be responsible for:

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

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

59. The experienced senior-level executive should:

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

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

61. Institutions should:

- a. ensure that resolution activities are adequately staffed to ensure that decisions in the context of resolution before, during and after a resolution event can be made in a timely manner;
- b. establish clear lines of responsibility, including reporting lines and escalation procedures up to and including board members and approval processes, for both resolution planning and crisis management (e.g. the implementation of the resolution decision, communication with relevant stakeholder groups, etc.), all of which is documented in dedicated policies and procedure documents (incl. playbooks);
- c. ensure that strategic decisions take into account resolution-related interconnections impacting resolvability (e.g. M&A activities, legal entity restructuring, changes to the booking model, use of intra-group guarantees and changes to the IT environment);
- d. inform resolution authorities without undue delay on material changes planned to elements such as the business model, the structure, the operational set-up (e.g. changes to the IT infrastructure) and the governance having an impact on resolution planning activities or the implementation of the preferred resolution strategy and resolvability;

- e. ensure an efficient flow of information on resolution matters between the management board, the responsible senior level executive and all other relevant staff, enabling them to perform their respective roles before, during and after the resolution event;
- f. ensure that intra-group providers of relevant services have their own governance structure and clearly defined reporting lines, do not rely excessively on senior staff employed by other group entities, have contingency arrangements to ensure that relevant services continue to be provided in resolution and that the provision of relevant services within the group is structured to avoid preferential treatment upon the failure or resolution of any group entity; and
- g. in the case of a group headquartered in a third country, ensure that the entity is well staffed and its management is well informed about the group resolution strategy, including the decision-making processes/procedures in a crisis, and is able to balance decision-making by the group headquartered in a third country in going-concern, by taking into account the resolvability of local entities.

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

63. Institutions should:

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

4.2 Minimum requirements relating to Financial resources as per Article 28 of DR 2016/1075

4.2.1 Funding and liquidity in resolution

Liquidity analysis

64. Institutions should identify the entities and currencies that they consider material^{26,27} on grounds of liquidity, and the potential locations of liquidity risk within the group.
65. Institutions should demonstrate their ability to measure and report their liquidity position at short notice and have capabilities to perform liquidity analysis of current positions at the level of material entities and of the group for material currencies. They should also be able to confirm that the liquidity needs of each non-material entity, and the obligations arising in each non-material currency, do not represent a risk to the liquidity position of the institution in resolution.
66. Institutions should identify the liquidity drivers in the run-up to resolution and in resolution. In the identification of drivers, institutions should consider crises of different natures.
67. Institutions should ensure that the liquidity analysis, mentioned in paragraph 65 is updated as necessary at the level of material entities, and institutions should timely deliver such information to resolution authorities, with the end aim of describing possible liquidity sources to support resolution, as per BRRD Annex Section B (20).
68. Institutions should report the metrics indicated in paragraph 71 at the level of the resolution group, for each material legal entity²⁸ and, where relevant, for specific branches within the resolution group, in aggregate, on an individual basis and by material currency. Moreover, institutions should detail the assumptions upon which they rely in forecasting the evolution of the liquidity value of the counterbalancing capacity.
69. Institution should simulate cash flows, for on and off-balance sheet items, and the counterbalancing capacity under different resolution scenarios:
- a. for the resolution group, for each material legal entity and, when relevant, for specific branches within the perimeter of the resolution group on an individual basis;

²⁶ For these purposes material currencies are considered to be those for which separate reports are required following paragraph 2 of Article 415 of the CRR.

²⁷ When identifying material entities institutions should include any relevant legal entities as defined in Article 2(4) DR2016/1624 but also consider any critical role played in the provision of funding e.g. access to Central Bank facilities.

²⁸ Identified in accordance with paragraph 66.

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

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

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

Mobilisation of assets and other private resources

71. Institutions should develop capacity to:

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

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

72. Institutions should operationalise the mobilisation of collateral, developing and documenting all necessary operational steps, including the time horizon and governance processes, also to mobilise collateral that may be located in subsidiaries and/or branches operating in different currencies. The mobilisation of available collateral should be assessed²⁹ and its effectiveness and operational robustness should be regularly (at least annually) evaluated and tested, to encompass, for instance, the ability to sell, repo or borrow against certain assets.

Access to ordinary central bank facilities

73. Institutions should consider their need and ability to monetise collateral with third parties, including any potential need or ability to request liquidity from ordinary central bank facilities.

74. Institutions should ensure that the conditions for access to ordinary central bank facilities by material legal entities of an institution in resolution are also considered, including minimum conditions to be satisfied, collateral requirements, duration, or other terms.

75. Institutions should be able to provide information on the amount, and location within the group, of assets which would be expected to qualify as collateral for central bank facilities, as per Art. 29(2) Delegated Regulation 2016/1075.

Cross-border cooperation

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

²⁹ Institutions should pay particular attention to impediments to the movement of funds and legal impediments in foreign jurisdictions. With this aim, institutions should have the capability to calculate and report the amount of assets which are freely transferable across the group, also accounting for the need to satisfy local regulatory requirements and meet operational liquidity needs.

4.3 Minimum requirements relating to Information systems as per Article 29 of DR 2016/1075

4.3.1 Information systems testing

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

4.3.2 Information systems for valuation

78. Institutions should have capabilities (including MIS and technological infrastructure) to support the timely provision of valuation data at a sufficient level of granularity to enable valuations to be performed within a suitable timeframe. Those capabilities are set out in the MIS chapter of the EBA valuation handbook³⁰.

4.4 Minimum requirements relating to Cross-border issues as per Article 30 of DR 2016/1075

4.4.1 Contractual recognition

79. Institutions should be able to provide a list of contracts concluded under third country law. This list should identify the counterparty, the obligations for the institutions and whether the contract is being exempted from contractual recognition or it has included the contractual recognition terms for bail in and stay powers.³¹

80. When monitoring compliance by banks with Article 71 of BRRD, resolution authorities should consider the most appropriate means, considering the national legal background:

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

³⁰ <https://www.eba.europa.eu/eba-highlights-importance-data-and-information-preparedness-perform-valuation-resolution>

³¹ Article 55 of BRRD

81. Institutions are expected to carry out self-assessments and declare if they are able to provide the required data in the proper format and timeline.
82. Further, after setting up and imposing the requirement, resolution authorities should check for compliance using the following means as appropriate:
- a. Requirement to deliver the data in a predetermined format at certain time intervals; This can be further examined with an ad-hoc request to test the capability of the institution to deliver required data in a short period of time;
 - b. Request that institutions carry out a gap analysis on the information collected and available in their systems versus the minimum set of information provided in the Annex of the ITS;
 - c. Designate the institution's internal audit function to check compliance. Based on this audit review, a statement is forwarded to the resolution authority with the outcome of the review process;
 - d. The organisation of dry-run exercises;

Obligations of authorities in resolution colleges

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

4.5 Resolution implementation

84. Institutions, in cooperation with resolution authorities, should describe all operational aspects of, and operational measures necessary to, the resolution strategy as set out in this section in playbooks (including responsibilities, escalation procedures, quality assurance and all relevant regulations) and regularly evaluate and test those aspects by means of dry runs. In said playbooks, institutions should also cover the appropriate scenarios and describe all relevant internal regulations.
85. Since operational aspects of the resolution strategy are mostly linked to the tool(s) to be used, and touch upon several expectations outlined in the following chapters, institutions are expected to demonstrate testing and operationalisation capabilities as further described below.

4.5.1 Bail-in exchange mechanic

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

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

87. Institutions, which should actively support the authorities, are responsible to ensure that said exchange mechanic is operationally applicable to them. As such, they should lay down in a playbook a process implementing the bail-in exchange mechanic and, in particular, they should highlight how their process:

- a. addresses the discontinuation, cancellation or suspension from listing or trading of securities;
- b. addresses the risk of non-settled transactions;
- c. deals with listing or relisting, and admission to trading of new securities or other claims;
- d. enables the delivery of equity to bailed-in creditors;
- e. accounts for potential adjustment that may be required at a later stage once the full extent of the institution's losses is known, e.g. based on the outcome of the final valuation; and
- f. allows for potential residual unclaimed equity to be claimed beyond the initial exchange period³².
- g. Complies with their disclosure obligations under Regulation (EU) No 596/2014³³

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

Disclosure and specification of the bail-in exchange mechanic

89. The bail-in exchange mechanic should be disclosed to the market as soon as its design is deemed final. Would the market not be prepared to the bail-in exchange mechanic, it could react in a way that could threaten the resolvability of institutions. Market participants involved in the mechanic will therefore have a better comprehension of what is expected of them.

³² New shareholders or new owners of the equity may not be immediately identified and contacted during the early stage of the bail-in execution. The bail-in exchange mechanic should enable them to claim their rights at a later stage.

³³ Regulation (EU) No 596/2014 of the European Parliament and of the Council of 16 April 2014 on market abuse (market abuse regulation).

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

90. In addition, institutions should consider in a playbook all the internal aspects of the bail-in, the timeline, the internal processes ensuring the transfer of losses to the resolution entity, the individual steps for the write-down and conversion by type of instrument.
91. Institutions should lay down in a playbook how they will be able to communicate the necessary information for valuation purpose as per section 4.4.1 of the guidelines and for the bail-in order.
92. Institutions should demonstrate how they would be able to update their balance sheet on the basis of the provisional valuation at short notice e.g. over the resolution weekend.
93. When setting-out the internal aspects of bail-in, institutions should at least consider the following aspects: legal impediments, accounting impediments, tax impact, instrument specific features, SPVs, hedges, accrued interest, liabilities held by the institution itself, and adjustments to assumptions.

4.5.2 Business Reorganisation

94. After the decision on a resolution action is taken, necessary business reorganisation measures will need to be implemented, in order to feasibly and comprehensively restore an institution's viability. These needs will encompass both business reorganization needs aimed to restore the viability of the entity, as well as, the reorganization of the service delivery model in case of transfer to an acquirer or bridge institution or separation of part of the group (e.g. MPE).

Capabilities underpinning the production of the Business Reorganisation Plan

95. Article 52 of Directive 2014/59/EU specifies that, one month after the use of the bail-in tool, an institution should produce a Business Reorganisation Plan³⁴ (BRP). Institutions -as part of their playbook- should demonstrate their capabilities to deliver the BRP in due time.
96. Institutions should be able to demonstrate how they would rapidly draft a business reorganisation plan covering the sections set out in Article 52 of Directive 2014/59/EU and further specified in Commission Delegated Regulation (EU) 2016/1400.
97. Institutions, should demonstrate they have a clear understanding of the coordination arrangement established between the resolution and competent authorities as per the EBA guidelines 2015/21.
98. Institutions should demonstrate how they would communicate with resolution and competent authorities in order to address any potential questions/comments from the authorities about the BRP and ensure swift assessment of the viability of the BRP as per Article 4 of Commission Delegated Regulation (EU) 2016/1400 by authorities.

³⁴ Content of the BRP is further specified in the DR 2016/1400 and in EBA guidelines 2015-21

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

Identification of and planning for potential business reorganisation options

100. Where elements of the business reorganisation plan are key to the execution of the resolution strategy (e.g. operational separation of parts of the group in the case of MPE or where the asset separation tools is used) or when elements of the business reorganisation plan bear a high probability (e.g. solvent wind-down for complex portfolios) institution in coordination with resolution authorities should anticipate the production of these elements of the BRP already in the resolution planning phase.

101. In particular, elements under Article 2(1)c, Article 2(2) and Article 3 of Commission Delegated Regulation (EU) 2016/1400 should be considered.

Separability to support resolution and the business reorganisation

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

103. Where relevant, institutions should have capability to identify and separate portfolios of assets. They should be able to adequately pair those assets and liabilities and should pay particular attention to assets that cannot be separated from one another, also taking into account which classes of arrangements are protected during the partial transfer of assets, rights and liabilities of an institution under resolution, in line with Art. 76 Directive 2014/59/EU and the further specifications provided by Commission Delegated Regulation (EU) 2017/867.

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

Re-authorisation and approvals

105. Institutions, in coordination with resolution authorities should identify the relevant supervisory and regulatory approvals and authorisations required to implement the resolution action and, to the extent possible, establish procedures in order to ensure the timely issuance of necessary approvals and authorisations.

106. In particular, (a) newly established financial companies should need to apply for authorisation to perform regulated activities; (b) prospective new managers and directors should need to obtain supervisory fit and proper approvals; (c) in the case of MPE strategies, the set-up of outsourcing arrangements with the former entities of the group may need to be approved and (d) the transfer of control to new shareholders may trigger change of control requirements (e.g. regulatory approval of qualifying holdings).
107. For the purposes of such re-authorisation and approval, clear procedures should be established to enable the smooth interaction and coordination between competent authorities, resolution authorities and financial supervision authorities.
108. Resolution authorities, in coordination with the relevant competent authorities, should review the restructuring measures put forward by institutions. In the context of an MPE strategy, particular attention should be given to the viability of the operational arrangements to be in place post-resolution.

4.5.3 Governance in resolution execution

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

Management and control of the institution during resolution

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

Removal and appointment of management

113. Resolution authorities should specify the scope for members of the management body and senior management to be removed and new management to be appointed depending on the circumstances of the institution's failure and any actions already taken by the institution or supervisory authorities in the recovery phase.³⁶

³⁵ Under article 35 of Directive 2014/59/EU

³⁶ BRRD Article 34.1.c

114. Resolution authorities should require institutions to have options and arrangements in place to maintain key staff of the institution in resolution, including if necessary to facilitate the application of the resolution strategy.
115. Competent authorities, in cooperation with resolution authorities, should specify the criteria new management would be expected to meet, and what information, direction, authorisation, and documentation they may need.

Transfer of control to new owners and managers

116. Resolution authorities should develop a clear mechanism for (i) establishing the new ownership of the institution as a result of the bail-in exchange; and (ii) transitioning to a state where governance and control rights are exercised by the new owners.³⁷
117. Such mechanism should be publicly disclosed ex ante (as appropriate) and emphasised in communications at the time of resolution.

4.5.4 Communication

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

Communication strategy

119. Institution, in cooperation with resolution authorities, should develop a comprehensive creditor and market communication strategy for the resolution period.
120. Institutions should have in place a communication strategy that includes, as appropriate, template documents, frequently asked questions and answers and other tools to be used at key stages of the resolution period.
121. Institutions should identify critical external and internal stakeholder groups, which need to be informed in the resolution process, including the stakeholder groups set out in Art. 22 (6) Commission Delegated Regulation (EU) 2016/1075 as well as relevant providers of services or operational assets. A list of the critical external and internal stakeholders identified should be prepared and maintained up-to-date, so as to make it ready to share with the resolution authority.
122. Institutions should draft a targeted communication strategy for the identified stakeholder groups, with pre-defined messages tailored to the resolution strategy determined by the relevant resolution authority, anticipating confidentiality considerations.

³⁷ See forthcoming EBA Guidelines on fit and proper developed under SGGR.

123. For each identified stakeholder group, the communication plan should contain the key messages (and the level of detail of those messages) to be communicated to promote confidence in the institution throughout resolution. The key messages should be robust, consistent and easily understandable and include, among others:
- a. a general statement based on the level of communication that would likely be required according to the resolution actions which might be taken; and
 - b. information about the consequences of the resolution for the respective stakeholder group, in order to promote certainty and predictability.
124. Institutions should determine when communication with the identified stakeholders is necessary and define a strategy and procedures to prevent potential leaks of information.
125. Institutions should identify the owner of the communication (unit/function responsible for defining the message) and, if different, the unit/function responsible for disseminating the message, together with effective communication channels and the infrastructure that will be needed and used to implement the communication strategy and disseminate relevant messages.
126. Institutions should supplement the key messages through the development of template documents and emails, frequently asked questions and other tools (e.g. establishment of call centers on an ad-hoc basis) to be used in the resolution process.
127. Institutions should identify any communications to market participants that may be required under applicable national legal disclosure regimes.

Annex 1 – Resolution timeline

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

Annex 2 – Resolvability assessment template (see separate document)

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

Essential fields

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



- 16) Resolution group/s for which the service is relevant (name of resolution group)
 - 17) Name of alternative service provider
 - 18) Jurisdiction/s of the contract or dispute process, including agreed adjudication procedures, mediation, and arbitration or internal dispute resolution
 - 19) Governing law [see CIR Template Z 8.00, 0110]
 - 20) Country(ies) in which the services are provided (if different from country of registration of the provider)
 - 21) Resolution-resilient contract (according to the resolution resilient features) (Y/N/Partially)³³
 - 22) Penalties for suspension, breach of contract or termination, delay with payments
 - 23) Trigger/s for early termination
 - 24) Termination notice period for the provider
 - 25) Duration of post-termination assistance (months)
- Additional fields
- 1) Relationships between contracts (e.g. cross-referencing between SLAs and master contracts)
 - 2) Conditions of payment (e.g. pre-payment/post-payment)
 - 3) Existence of automatic renewal clauses (Y/N)
 - 4) Quantitative performance targets for the provider (e.g. 10 licenses for XYZ)
 - 5) Qualitative performance targets
 - 6) Party(ies) allowed to terminate
 - 7) Estimated time for substitutability [see CIR Template Z 8.00, 0090]

5. Accompanying documents

Draft cost-benefit analysis/impact assessment

I. Introduction

Banks' resolvability has improved since the entry into force of Directive 2014/59/EU (BRRD I), as legislative and policy products were issued to remove impediments to resolvability. In particular, Guidelines on measures to reduce or remove impediments to resolvability³⁸ provide further details on the measures to remove impediments specified in Article 17(5) of BRRD I. Simultaneously, the RTS on the content on resolution plans and the assessment of resolvability³⁹ was issued to fulfil the mandate of Article 15 of BRRD I.

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

II. Policy objectives

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

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

³⁸ <https://eba.europa.eu/regulation-and-policy/recovery-and-resolution/guidelines-on-measures-to-reduce-or-remove-impediments-to-resolvability>

³⁹ <https://eba.europa.eu/regulation-and-policy/recovery-and-resolution/regulatory-technical-standards-on-resolution-planning>

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

III. Baseline scenario

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

IV. Options considered

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

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

Approach

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

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

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

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

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

Option 2 is the preferred option.

Scope of application

Option 1: All banks within the scope of resolution

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

Option 2: discretion for banks under simplified obligations

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

Option 2 is the preferred option.

V. Cost-benefit analysis

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

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



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

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

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

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

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

5.1 Overview of questions for consultation

1. Do you have any comments on the scope of application of these guidelines?
2. Do you have any comments with the proposed requirements to improve resolvability with regard to operational continuity in resolution?
3. Do you have any comments on the proposed requirements to improve resolvability with regard to access to FMIs in case of resolution?
4. Do you have any comments on the proposed requirements to improve resolvability with regard to management information systems and information system testing?
5. Do you have any comments on the proposed requirements to improve resolvability with regard to funding and liquidity in resolution?
6. Do you have any comments on the proposed requirements to improve resolution implementation?
7. Do you have suggestions of areas of resolvability, which would need to be further specified?