EBA/GL/2023/06

19/07/2023

Final Report

Guidelines on overall recovery capacity in recovery planning

Contents

1. Executive Summary

Directive 2014/59/EU[1] requires institutions to set up recovery plans to strengthen their ability to restore financial and economic viability when potentially facing situations of significant deterioration. Through recovery planning, institutions are preparing in advance to address a wide range of crises that could emerge.

In this context, Section A of the Directive 2014/59/EU Annex specifically provides for institutions to include a summary of their overall recovery capacity (ORC) within their recovery plans, the ORC being the extent to which the recovery options allow that entity or those entities to recover in a range of scenarios of severe macroeconomic and financial stress[2]. The role of the ORC as a summary measure within the recovery plan is further outlined by Article 4 of Commission Delegated Regulation (EU) 2016/1075[3]. The delegated regulation, as set out in Article 16, also provides for competent authorities' assessment of the completeness of the recovery plan, including the ORC. Therefore, the existing legal framework requires on the one hand institutions to summarise their ORC and, on the other hand, competent authorities to assess it as part of the overall assessment of the institutions' recovery plan.

The ORC is a key outcome of recovery planning, providing an indication of the overall capability of the institution to restore its financial position following a significant deterioration of its financial situation. The determination of this component is relevant for institutions and competent authorities as well, enabling them to assess the extent to which institutions would be able to overcome a range of potential crisis situations through the implementation of suitable recovery options.

In order to ensure that the ORC effectively fulfils its role as a summary of institutions' 'recoverability', it needs to be properly determined and consistently represented by institutions. In the absence of a specific framework and specific guidance on the relevant steps underlying the ORC determination, institutions have developed a wide range of different practices. This has also emerged from a recent survey carried out by the EBA among competent authorities on the current state of play of the ORC in terms of its consistent inclusion and homogeneous role within the recovery plan. Similarly, the ORC assessment by competent authorities turns out not to be fully

[1] Directive 2014/59/EU of the European Parliament and of the Council of 15 May 2014, establishing a framework for the recovery and resolution of credit institutions and investment firms and amending Council Directive 82/891/EEC, and Directives 2001/24/EC, 2002/47/EC, 2004/25/EC, 2005/56/EC, 2007/36/EC, 2011/35/EU, 2012/30/EU and 2013/36/EU, and Regulations (EU) No 1093/2010 and (EU) No 648/2012, of the European Parliament and of the Council (OJ L 173 12.6.2014, p. 190).

[2] Art. 12(3) of Commission Delegated Regulation (EU) 2016/1075.

[3] Commission Delegated Regulation (EU) 2016/1075 of 23 March 2016 supplementing Directive 2014/59/EU of the European Parliament and of the Council with regard to regulatory technical standards specifying the content of recovery plans, resolution plans and group resolution plans, the minimum criteria that the competent authority is to assess as regards recovery plans and group recovery plans, the conditions for group financial support, the requirements for independent valuers, the contractual recognition of write-down and conversion powers, the procedures and contents of notification requirements and of notice of suspension and the operational functioning of the resolution colleges (OJ L 184 8.7.2016, p. 1).

aligned across jurisdictions both in terms of the nature and the scope of the assessment performed, mostly due to the divergence of practices in the ORC determination across institutions.

Against this background, the EBA has developed these own-initiative guidelines addressed to both institutions and competent authorities to achieve a harmonised approach to the determination and assessment of the ORC.

On this basis, these guidelines are composed of two parts:

(i) The first is addressed to institutions, providing them with guidance on setting the framework for the determination of the ORC.

(ii) The second complements the framework by supporting competent authorities in their assessment of the institutions' ORC as part of the overall assessment of the recovery plans.

Next steps

The guidelines will be translated into the official EU languages and published on the EBA website. The deadline for competent authorities to report whether they comply with the guidelines will be two months after the publication of the translations. The guidelines will apply from *3 months after the date of publication on the EBA's website of the guidelines in all EU official languages (date of issuance of the guidelines)*.

2. Background and rationale

Setting the framework of the ORC – guidance to institutions

1. The ORC framework is based on two fundamental components:

    (i) the list of credible and feasible recovery options; and

    (ii) the range of sufficiently severe scenarios.

2. The ORC needs to be established on a sound basis in order to provide a proper indication of the institution's 'recoverability'. This is the reason why the guidelines stress the importance of identifying recovery options that are credible and feasible under the scenario of reference. To guide institutions in an appropriate assessment of the credibility and feasibility of their recovery options – while taking into account that this will be dependent on the type of option, the specific business profile of the institution and the macroeconomic environment of reference – the guidelines establish a non-exhaustive set of general qualitative requirements (i.e. past experience, level of preparedness, etc.) that institutions should take into account for their assessment of the credibility and feasibility of the recovery options.

3. Among the qualitative elements to consider in the feasibility assessment, the institutions are expected to consider the different types of impediment which could negatively impact on the implementation of the option. In particular, the institutions should consider the following impediments:

    (i) operational: for example, in the case of a disposal recovery option, to assess the presence of operational links of the disposed entity with the rest of the group;

    (ii) reputational: for example, de-risking options could give negative signals to the market impacting on its reputation;

    (iii) legal: for example, in the case of reduction of staff costs or dividend distribution, there are contractual clauses/terms in employees' or other third-party contracts (i.e. governing pay terms, taxes, redundancies, bonuses, pensions) which could negatively affect the execution of the option;

    (iv) financial: for example, the reduction or elimination of business lines could impact on the business offer to customers impacting on its customer franchise and ultimately profitability;

    (v) business model and profitability: for example, the disposal of an asset management subsidiary to raise liquidity could alter the business model of an institution as well as its long-run profitability;

    (vi) market situation: the implementation of options is not fully within the institution's control but relies on action by third parties for example in the case of disposals or raising liquidity.

4. Moreover, for the ORC to provide a proper indication of the ability of the institution to recover, it is essential that the scenarios under which it is determined are sufficiently severe. Only an appropriate level of severity would in fact ensure the implementation of the full set of available recovery options, allowing the institution to truly demonstrate its full capacity to restore its business and financial viability. To this end, in accordance with the existing EBA guidelines on scenarios[4], scenarios are considered severe enough if – within a reasonable timeframe – they would lead institutions to the 'near-default' point in the event that no recovery options are implemented (the so-called 'unmanaged case'). In particular, in order to ensure appropriate determination of the ORC, the guidelines specify that scenarios should at least lead to the breach of the relevant capital or leverage or liquidity regulatory requirements[5] in the 'unmanaged case'. The expectation is that the timely implementation of the recovery options by the institutions would be able to prevent the depletion of the capital/leverage/liquidity ratios to their lowest levels, which would therefore be reached in the scenario only in the event that no action is taken. In general, in order to design such scenarios, in line with EBA/GL/2014/06, 'reverse stress testing' could be used as a tool for identifying scenarios that would threaten to cause the non-viability of the business model unless recovery actions were successfully implemented.

5. While institutions are expected to design scenarios that breach the aforementioned regulatory requirements, the guidelines recognise that, in limited exceptional cases, institutions could provide a detailed explanation to the competent authorities on why, in their case, scenarios that do not breach the capital or leverage regulatory requirements should still be considered severe enough. This flexibility is left to the very few cases of institutions, for instance with an extremely strong capital/leverage position, which can reasonably demonstrate that they cannot draw up a plausible scenario breaching capital or leverage regulatory requirements and that the designed scenario would anyway threaten their failure. No residual flexibility is provided instead for liquidity regulatory requirements as they could always be theoretically subject to extremely fast and unexpected acute depletion.

6. In defining the methodology for the determination of the ORC, the guidelines specify the steps that an institution should follow[6]:

   1) selection of recovery options – the institution should identify the recovery options that could be credibly and feasibly used under each specific recovery plan scenario;

[4] EBA/GL/2014/06 on the range of scenarios to be used in recovery plans.

[5] The scenarios should lead to the breach of the total SREP capital requirement (TSCR) or total SREP leverage ratio requirement (TSLRR) as defined in the EBA SREP guidelines – EBA/GL/2022/03 or any other version updating them, if any – or liquidity regulatory requirements as defined according to the outcome of the SREP assessment (i.e. LCR and/or NSFR 100% threshold including any relevant addition as a result of the SREP), including the cases where multiple breaches of these requirements occur.

[6] To support the determination of the ORC, institutions could use as a reference value their recovery capacity under the application of no scenario (business as usual recovery capacity – 'BAU RC'): i.e. the sum of the impacts of the list of credible and feasible recovery options under no scenario while also adjusted for mutual exclusivity between certain options and any other constraining factors that would restrict the institution's ability to successfully implement and/or generate the full impact from the recovery options. The BAU RC may represent a useful comparative reference value which institutions can use for the determination of the ORC when considering appropriate haircuts to the impacts of their recovery options under scenario-specific conditions.

2) adjustment of recovery options – the institution should further refine the choice of options by considering several constraining factors related to the simultaneous or sequential implementation of the combination of options. Among those factors, the institution should consider important aspects such as mutual exclusivity (for example, a portfolio which would be sold cannot be securitised – again – at a later stage), interdependencies (for example, limiting dividends or distributions on AT1 instruments may affect subsequent CET1 or AT1 issuances), operational capability to implement a multitude of recovery options simultaneously (for example, depending on the size and experience of the bank, preparing the securitisation of several asset portfolios in parallel might run up against operational constraints, as there may only be a limited number of staff with the required expertise);

3) calculation of 'scenario-specific recovery capacity' – the institution should add up the quantitative impacts of the selected options under the specific scenario showing how the recovery capacity accumulates over a timeline of 18 months for the impact on the capital position (including leverage) and 6 months for the impact on the liquidity position and using, as a starting point for the calculation, the breach of the recovery plan indicators resulting in the implementation of the relevant recovery options (for instance including those related to capital or liquidity). The outcome of this calculation is the recovery capacity for the specific scenario, which is quantified in terms of the relevant recovery plan indicators in Annex II ('Minimum list of recovery plan indicators') of the EBA Guidelines on recovery plan indicators under Article 9 of Directive 2014/59/EU[7] referring to the CET1 ratio, total capital ratio, leverage ratio, NSFR and LCR ('relevant RP indicators'). In the event that the institutions would take action under the recovery plan before the breach of the relevant indicator, in accordance with Article 9 of Directive 2014/59/EU, the financial impact of the activated options can be included in the 'scenario-specific recovery capacity' from the defined starting point as indicated in paragraph 24;

4) determination of the ORC range – once the institution has calculated its 'scenario-specific recovery capacity' under each relevant scenario, it will define its ORC as a range of these capacities. More specifically, the capital ORC will be the range formed by the highest and lowest recovery capacity under the scenarios whose impact is mostly on capital (including leverage) and/or under scenarios with significant impact on both dimensions (capital, including leverage, and liquidity). The same will apply for the building of the liquidity ORC range.

An illustrative example on the relevant steps for the ORC determination has been provided in the 'Background and rationale' section of the Consultation Paper[8].

Competent authorities' assessment of the ORC

[7] EBA/GL/2021/11.

[8] From page 11 to 18 of the CP Draft GLs on overall recovery capacity in recovery planning.pdf (europa.eu). The reader should note that the illustrative example is based on the proposed draft text of the Consultation Paper and does not include any following change made in the Final Report (i.e. timeframe extended from 12 months to 18 months for the impact of the recovery options on the capital – including leverage – position).

7. The other relevant component that complements the ORC framework is the assessment by the competent authorities. This step, as part of the overall assessment of the recovery plan in accordance with Articles 6 and 8 of Directive 2014/59/EU and Commission Delegated Regulation (EU) 2016/1075, is relevant to inform the supervisory view on the capacity of the institutions to restore their viability and financial position when subject to a range of severe stress.

8. Firstly, when assessing the set of the recovery options provided by the institutions, competent authorities should review all the relevant aspects underlying their implementation. These aspects range from the credibility and feasibility assessment to the anticipated timeline for their execution, their likely impact on the institutions' 'relevant RP indicators' as well as any constraining factors related to their simultaneous or sequential implementation. Peer group analysis could support this assessment through the comparison of the relevant qualitative and quantitative assessment performed by peer group institutions.

9. In the assessment of the severity of the scenarios, competent authorities should verify that, in line with the objective of the recovery plan to identify measures that restore the viability and financial position of an institution in severe stressed conditions, the 'near-default' point would be reached by the institution in the event that no recovery options are implemented. If this level of severity is not met by the institution, competent authorities may request the institution to perform appropriate adjustments including the resubmission of the recovery plan as a result of a material deficiency assessment in accordance with Article 6 of Directive 2014/59/EU. The rationale is that if an institution does not envisage scenarios that are severe enough to threaten its failure, the assumption underlying the recovery plan would not be fulfilled and thus the plan would not play its role of providing a complete picture of the institution's 'recoverability'. Competent authorities could, however, accept a scenario that has not breached the capital or leverage regulatory requirements described in paragraph 20 of the guidelines only in those specific and extraordinary cases where they are satisfied with the explanation provided by the institution with regard to the attained level of severity taking into account, among other things, the institution's overall risk profile.

10. The result of the ORC assessment by the competent authorities is the so-called 'adjusted ORC'. It is obtained by analysing, as thoroughly as possible given the data obtained from the institutions' recovery plans, the relevant assumptions and steps performed by the institutions to determine their ORC as the range of the 'scenario-specific recovery capacities', and it aims to reflect the competent authorities' overall assessment of the institutions' ORC. The 'adjusted ORC' is quantified both in terms of capital and liquidity ORC, in line with the outcome of the institutions' ORC. The 'adjusted ORC' by the competent authorities is expected to result either in a lower or in an equal level compared to the ORC calculated by the institutions, having considered all the available information.

11. Competent authorities would assign an indicative summary ORC score with three potentially different outcomes (i.e. 'satisfactory', 'adequate with potential room for improvement' or 'weak') based on the level reached by the 'adjusted ORC' compared respectively to the institutions'

‘relevant RP indicators’ thresholds and regulatory requirements (in accordance with paragraph 20 of the guidelines) adding the relevant regulatory buffer requirements.

12. To complement their ORC assessment, it is explicitly provided for competent authorities to consider qualitative elements, not already reflected in the ‘adjusted ORC’, of the ORC framework. This may result in the adjustment – either upward or downward – of the previously assigned summary ORC score if this latter, as an outcome of the competent authorities’ assessment of the additional qualitative elements, does not fully represent the supervisory view on the ORC of the institution. The final ORC score will therefore appropriately reflect both the quantitative and qualitative overall assessment of the competent authorities.

13. Where the final ORC score is ‘weak’, competent authorities either identify a material deficiency in the recovery plan in accordance with Article 6 of Directive 2014/59/EU or a specific area of improvement related to the ORC. Where the score is ‘adequate with potential room for improvement’, competent authorities may identify a specific area of improvement. When considering the existence of a material deficiency or an area of improvement, the guidelines envisage that competent authorities take into account, inter alia, some additional elements, such as the current condition of the institution (e.g. whether a capital conservation plan is in place), the progress that the institution has made to improve the ORC compared to the previous recovery plans as well as the existence of sound capital (including leverage) and/or liquidity headroom.

14. The objective of the assignment of an ORC score is to enable competent authorities to take into account the evolution of the institutions’ ORC over time, fostering consistency and a harmonised supervisory approach. The score could as well serve as a component of the assessment of the recovery plan information in the context of the overall assessment of the institutions’ risk profile within the annual supervisory review and evaluation process (SREP).

15. Applying the proportionality principle already reflected in Article 4 of Directive 2014/59/EU with regard to the simplified obligations regime, these guidelines specify that competent authorities may apply all or part of these guidelines to institutions subject to simplified obligations. For this determination by competent authorities, proportionality will also be relevant taking into account the fact that application of the ORC framework depends on i) the number and/or complexity of available recovery options and ii) the number and design of scenarios included in the recovery plan and, therefore, the simplified scope of the plan may reduce or even not require the application of the ORC framework as part of the institution’s recovery plan.

16. These guidelines take into account the principle of proportionality when determining the scope of their application to investment firms. In this context, while the guidelines should apply in principle to all institutions as defined in Directive 2014/59/EU, competent authorities should be able to waive specific parts of the guidelines for investment firms, where their application would not be appropriate for the recovery planning of the investment firm or the investment firm group having regard to its business model as well as its legal structure, risk profile, size and complexity.

3. Guidelines

EBA/GL/2023/06

19/07/2023

Guidelines

on overall recovery capacity in recovery planning

1. Compliance and reporting obligations

Status of these guidelines

1. This document contains guidelines issued pursuant to Article 16 of Regulation (EU) No 1093/2010[9]. In accordance with Article 16(3) of 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, 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 11.12.2023. 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 with the reference 'EBA/GL/2023/06'. 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 how institutions should include in the recovery and group recovery plans a summary of their overall recovery capacity in accordance with Articles 5 and 7 and Annex, Section A, point (1) of Directive 2014/59/EU[10] and with Chapter 1, Section II of Commission Delegated Regulation (EU) 2016/1075[11] and how competent authorities should assess the overall recovery capacity of institutions within the context of the assessment of the recovery and group recovery plans in accordance with Articles 6 and 8 of that Directive and with Chapter 1, Section III of that Commission Delegated Regulation.

Scope of application

6. These guidelines apply to institutions as defined in point 23 of Article 2(1) of Directive 2014/59/EU subject to the obligations set out in Articles 5 to 9 of that Directive as further specified in Articles 3 to 21 of Commission Delegated Regulation (EU) 2016/1075.

7. 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.

8. For institutions that are part of a group subject to consolidated supervision pursuant to Articles 111 and 112 of Directive 2013/36/EU[12], these guidelines apply at the level of the Union parent undertaking and at the level of its subsidiaries.

9. Competent authorities may specify how to apply all or part of these guidelines to institutions which are subject to simplified obligations with regard to their recovery plans as set out in Article 4 of Directive 2014/59/EU.

10. Competent authorities may waive part of paragraphs 26, and from 41 to 47, for institutions that are investment firms, where their application would not be appropriate for the recovery

[10] Directive 2014/59/EU of the European Parliament and of the Council of 15 May 2014 establishing a framework for the recovery and resolution of credit institutions and investment firms and amending Council Directive 82/891/EEC, and Directives 2001/24/EC, 2002/47/EC, 2004/25/EC, 2005/56/EC, 2007/36/EC, 2011/35/EU, 2012/30/EU and 2013/36/EU, and Regulations (EU) No 1093/2010 and (EU) No 648/2012, of the European Parliament and of the Council (OJ L 173, 12.6.2014, p. 190).

[11] Commission Delegated Regulation (EU) 2016/1075 of 23 March 2016 supplementing Directive 2014/59/EU of the European Parliament and of the Council with regard to regulatory technical standards specifying the content of recovery plans, resolution plans and group resolution plans, the minimum criteria that the competent authority is to assess as regards recovery plans and group recovery plans, the conditions for group financial support, the requirements for independent valuers, the contractual recognition of write-down and conversion powers, the procedures and contents of notification requirements and of notice of suspension and the operational functioning of the resolution colleges (OJ L 184 8.7.2016, p. 1).

[12] Directive 2013/36/EU of the European Parliament and of the Council of 26 June 2013 on access to the activity of credit institutions and the prudential supervision of credit institutions, amending Directive 2002/87/EC and repealing Directives 2006/48/EC and 2006/49/EC (OJ L 176 27.6.2013, p. 338).

planning of the investment firm or the investment firm group having regard to its business model as well as its legal structure, risk profile, size or complexity.

Addressees

11. These guidelines are addressed to competent authorities as defined in points (2)(i) and (2)(viii) of Article 4 of Regulation (EU) No 1093/2010 and to financial institutions as defined in point (1) of Article 4 of Regulation (EU) No 1093/2010 where these financial institutions fall within the scope of these guidelines.

Definitions

12. Unless otherwise specified, terms used and defined in Directive 2014/59/EU, Directive 2013/36/EU and Directive 2019/2034/EU have the same meaning in the guidelines.

3. Implementation

Date of application

13. These guidelines apply from 11.01.2024.

4. Setting the framework of overall recovery capacity (ORC) for institutions

14. Institutions, for determining the overall recovery capacity (ORC), should define the following components in accordance with Section I of these guidelines:
    a. a list of credible and feasible recovery options;
    b. a range of scenarios of severe macroeconomic and financial stress.

15. Following the definition of the previous components, institutions should determine the ORC as a range of the 'scenario-specific recovery capacities' for all the relevant scenarios of severe macroeconomic and financial stress considered in the recovery plan, where the 'scenario-specific recovery capacity' is defined as the sum of the quantitative impacts of each recovery option that would be available and appropriate under each specific scenario, quantified in terms of institutions' relevant recovery plan indicators referring to capital (including leverage) and liquidity listed in paragraph 26 ('relevant RP indicators').

Section I. ORC basic components

List of credible and feasible recovery options

16. The starting point for the determination of the ORC should be a comprehensive full list of credible and feasible recovery options, each one of them considered independently from the others and without any reference to the recovery plan's specific scenarios. From this list, institutions should select all the recovery options that could be used under each specific scenario showing their 'scenario-specific recovery capacity'.

17. To ensure that the ORC effectively represents the ability of the institutions to restore their financial position following a significant deterioration, only recovery options that are deemed to be credible and feasible by the institutions in accordance with Title II, Chapter I, Section II of Directive 2014/59/EU, in accordance with Articles 8 to 12 of Commission Delegated Regulation 2016/1075 and in line with the general factors set out in paragraph 18 should be considered when determining the ORC.

18. The general factors for the credibility and feasibility assessment of the recovery options to be considered by the institutions when determining the ORC should take into account the type of option, the specific business profile of the institutions and the ongoing macroeconomic environment in which they operate and should include in particular the following elements:
    a. the expected external impact on the key stakeholders as well as any anticipated impact of the execution of the recovery option on the financial system;

b. past experience from the implementation of the recovery option by the institution or its peers provided there is available information;

c. level of preparedness for implementing the recovery option;

d. assessment of the continuity of operations following the implementation of the recovery option, including all the arrangements to maintain access to financial markets and the functioning of the internal processes;

e. the expected financial impact on the institution's relevant capital, liquidity, profitability and risk profiles on the basis of clear and transparent key assumptions ensuring the credibility of the estimation;

f. the anticipated timeline for the implementation of the recovery option;

g. presence of any operational, legal, reputational and financial impediments as well as any other impediments to the implementation of the recovery option.

Range of scenarios of severe macroeconomic and financial stress

19. The other component of the ORC is the 'range of scenarios of severe macroeconomic and financial stress'. In order to determine the ORC, institutions should calculate their recovery capacity specific for the relevant scenarios envisaged in the recovery plan (i.e. the so-called 'scenario-specific recovery capacity').

20. To calculate the 'scenario-specific recovery capacity', institutions should assume that the scenario results in them breaching their total SREP capital or leverage ratio requirement (TSCR or TSLRR) as defined in the EBA guidelines on common procedures and methodologies for the supervisory review and evaluation process ('SREP guidelines')[13] or their minimum regulatory liquidity requirements as determined by the most recent SREP assessment.

21. In the exceptional circumstances where an institution argues that it is not able to draw up a plausible severe scenario that would lead to a breach of the capital or leverage requirements as specified in paragraph 20, the institution should provide a detailed explanation to the competent authorities on why that specific scenario should still be considered severe enough to threaten its failure unless recovery measures were implemented in a timely manner.

Section II. Calculating 'scenario-specific recovery capacity'

Starting point

22. Institutions should consider as the starting point for the calculation of the 'scenario-specific recovery capacity' the breach of any recovery plan indicator that, according to the recovery plan, would result in a decision by the institution to implement one or more recovery options.

[13] EBA/GL/2022/03.

Timeframe

23. When assessing the expected timeframe for the recovery option as referred to in Article 12(2)(c) of Commission Delegated Regulation (EU) 2016/1075, for the purposes of calculating the 'scenario-specific recovery capacity' institutions should have regard to the specific features of the recovery options and the type of events included in the scenario (e.g. system-wide, idiosyncratic, combined).

24. Institutions should calculate the effects of the implementation of their recovery options, for an impact on their capital (including leverage) position over an 18-month time horizon and for an impact on the liquidity position over a 6-month time horizon, from the starting point determined in accordance with paragraph 22.

25. For recovery options with a longer timeframe than the ones set out in paragraph 24, only the impact observed within the identified timeframes set out in that paragraph should be included in the calculation of the 'scenario-specific recovery capacity'.

Representation

26. Institutions should express their 'scenario-specific recovery capacity' at least for the following 'relevant RP indicators'[14]:

    a. Common Equity Tier 1 (CET1) ratio;

    b. total capital ratio;

    c. leverage ratio;

    d. liquidity coverage ratio (LCR);

    e. net stable funding ratio (NSFR).

    In cases where the listed indicators were not included by the institutions in their recovery plan indicators framework based on the rebuttable presumption provided by the EBA Guidelines on recovery plan indicators[15], the 'scenario-specific recovery capacity' should be expressed in terms of the respective substitute indicators. Institutions should include in their recovery plans the nominal amounts underlying the computation of the relevant indicators (numerator and denominator) to allow competent authorities to properly assess and challenge the reported figures.

27. Institutions should express their 'scenario-specific recovery capacity' by reporting the sum of the impacts of the recovery options as defined in paragraph 15 to determine the extent to

[14] Included in Annex II ('Minimum list of recovery plan indicators') in the EBA Guidelines on recovery plan indicators under Article 9 of Directive 2014/59/EU (EBA/GL/2021/11).

[15] See Annex II – Minimum list of recovery plan indicators in the EBA Guidelines on recovery plan indicators under Article 9 of Directive 2014/59/EU (EBA/GL/2021/11).

which they would be able to recover in that scenario. The impacts should be represented in terms of the 'relevant RP indicators' over time, including the relevant time buckets, in line with the timeframe determined in accordance with paragraph 24.

Section III. Determining the ORC

Step 1 – Selection of recovery options

28. To calculate the 'scenario-specific recovery capacity', institutions should select from the list of the recovery options which are credible and feasible in accordance with paragraphs 16 to 18 all the options that would be available and appropriate under that specific scenario. Recovery options with low/limited probability of successful implementation should not be included by institutions when calculating their 'scenario-specific recovery capacities'.

Step 2 – Adjustment of recovery options: additional constraining factors

29. When selecting recovery options appropriate to a specific scenario, institutions should take into account in particular the following additional constraining factors related to the simultaneous or sequential implementation of recovery options:
    a. mutual exclusivity – whether some recovery options are mutually exclusive;
    b. interdependencies – whether activating one recovery option could affect the subsequent or simultaneous implementation of another option;
    c. operational capability to implement a multitude of recovery options simultaneously;
    d. increased reputational effects – whether implementing several recovery options in combination could reduce their impact and lead to impediments or relevant reputational effects;
    e. consequences for their business model or profitability when more than one recovery option that alone does not have a significant impact is applied together or sequentially with others (combined consequences).

Step 3 – Calculation of 'scenario-specific recovery capacity'

30. When calculating the 'scenario-specific recovery capacity', institutions should employ a dynamic balance sheet approach and, therefore, the impacts stemming from recovery options under a specific scenario should consider the effects of the recovery options used previously, if any, under the same scenario. In particular, the effect of a capital issuance should consider the total risk exposure amount (TREA) base at the moment of its implementation under the stress scenario. If recovery options such as risk reduction had been carried out previously under the same scenario, then the TREA base would be more favourable.

Step 4 – Determination of the ORC range

31. To determine the ORC range, institutions should consider the highest and lowest 'scenario-specific recovery capacity' respectively in terms of capital including leverage (capital ORC) and liquidity (liquidity ORC) 'relevant RP indicators' using the relevant scenarios for each of these dimensions. In this context, institutions should consider as relevant those scenarios where a depletion in terms of capital including leverage (for capital ORC) and/or liquidity (for liquidity ORC) 'relevant RP indicators' has occurred.

5. Competent authorities' assessment of the ORC

32. When assessing recovery plans, competent authorities should ensure, in a manner laid down in the following paragraphs, that, in determining their overall recovery capacity, institutions comply with Title 4 of these guidelines[16].

Section I. Assessment of the 'scenario-specific recovery capacity'

33. To assess the 'scenario-specific recovery capacity' provided by the institutions under each severe macroeconomic and financial stress, competent authorities should review the overall adequacy of the scenarios put forward by the institutions in accordance with Article 5(6) and Article 7(6) of Directive 2014/59 as specified in the EBA Guidelines on the range of scenarios to be used in recovery plans[17] and in line with Title 4 of these guidelines.

34. In particular, competent authorities should assess whether scenarios are severe enough with respect to the criteria defined in paragraph 20. In the exceptional case under paragraph 21, competent authorities should assess the detailed explanation provided by the institutions (to still consider such a scenario severe enough) and decide whether the severity of the scenario is sufficient considering, inter alia, the overall risk profile of the institutions. In cases where competent authorities consider that the scenario envisaged by the institutions is not severe enough, they could require institutions, where appropriate, to make adjustments, including the resubmission of the recovery plan as a result of the material deficiency assessment in accordance with Article 6 of Directive 2014/59/EU. Competent authorities should not take into account the institutions' 'scenario-specific recovery capacity' based on such a scenario when assessing the ORC.

35. Competent authorities should assess the credibility and feasibility, including the timeframe, the impacts and any constraining factors of the recovery options selected by the institutions and should challenge, in the context of the severe macroeconomic and financial stress, the extent to which institutions would be able to restore their viability and financial position.

36. Competent authorities should review, where appropriate and feasible, the assessment and calculation performed by the institutions covering in particular the following areas:
    a. feasibility/probability that a recovery option would be successfully implemented, including by reviewing the feasibility of the recovery options where these are assumed to be unrealistic or not driven by a proper assessment in line with paragraphs 16 to 18;

[16] Title 4. Setting the framework of overall recovery capacity (ORC) for institutions.
[17] EBA/GL/2014/06 of 18 July 2014.

b. the timeframe for the implementation of the recovery options, including by lengthening the expected timeframe for their implementation if the institution’s assessment is considered unrealistic. In cases where the recovery options timeframe would exceed the timeframe as defined in paragraph 24, only the effects observed within the relevant timeframes should be considered for the ORC assessment by the competent authority;

c. assessment of the quantitative impact of the recovery options, including by adjusting the impact downwards or by applying haircuts to the quantification provided by institutions where the likely impact of the recovery options is not based on realistic and plausible assumptions and quantifications;

d. additional constraining factors related to the simultaneous or sequential implementation of recovery options, as specified in paragraph 29, including by removing or adjusting the impact of specific options downwards where an interconnection between some of them is detected, giving priority, inter alia, to options with the highest feasibility level and/or with the most material impact in the given implementation period.

37. Competent authorities should take into consideration, where appropriate and available, peer group analysis in order to facilitate amongst other things:

a. cross-institutional comparison of the type of recovery options to be implemented under the different scenarios, thereby identifying whether some specific types of options have been missed by an institution;

b. peer group comparison of the expected financial impact from each type of recovery option under different stressed scenarios;

c. cross-institutional comparison of the expected time required to implement a recovery option and to realise its benefits;

d. cross-institutional comparison of the expected impediments and preparatory measures for each type of recovery option.

Section II. Assessment of ORC – ‘adjusted ORC’

38. Competent authorities should ensure that the ORC is calculated by the institutions as the range between the lowest and the highest ‘scenario-specific recovery capacity’ both in terms of capital (including leverage) and liquidity ‘relevant RP indicators’ in line with the criteria set out in paragraph 31.

39. Based on the assessment of the institutions’ ‘scenario-specific recovery capacity’, competent authorities should determine the ‘adjusted ORC’ of the institutions as a range both in terms of capital ‘adjusted ORC’ and liquidity ‘adjusted ORC’ and perform an overall quantitative and qualitative assessment of the ORC.

40. The ‘adjusted ORC’ should reflect the competent authorities’ assessment of the institutions’ ORC having considered and reviewed the relevant elements underlying its determination.

Based on the outcome of this assessment, competent authorities' 'adjusted ORC' should be either lower than or equal to the ORC determined by institutions.

ORC score

41. Competent authorities should assess the 'adjusted ORC' specified in accordance with paragraphs 39 and 40, assigning the following levels considering the 'relevant RP indicators' thresholds and the related regulatory requirements:

    a. 'satisfactory' – in cases where the 'relevant RP indicators' of the institutions after the inclusion of the 'adjusted ORC' are above their thresholds defined in line with the Guidelines on recovery plan indicators;

    b. 'adequate with potential room for improvement' – in cases where the 'relevant RP indicators' of the institutions after the inclusion of the 'adjusted ORC' would fail to be above the thresholds defined in line with the Guidelines on recovery plan indicators, but they would still be equal to or higher than institutions' capital including leverage and liquidity regulatory requirements referred to in paragraph 20 adding all applicable regulatory buffers;

    c. 'weak' – in cases where the 'relevant RP indicators' of the institutions after the inclusion of the 'adjusted ORC' would fail to meet the institutions' capital (including leverage) and liquidity regulatory requirements referred to in paragraph 20 adding all applicable regulatory buffers.

42. In cases where the 'adjusted ORC' would result between different levels under paragraph 41, competent authorities should select the most appropriate classification taking into consideration, in particular, the severity of the scenarios and the number of 'relevant RP indicators' positioned at the different levels.

43. To complement their ORC assessment, competent authorities should take into account general qualitative considerations, not already reflected in the 'adjusted ORC', on the ORC framework. This may result in an upward or downward adjustment of the indicative scoring under paragraph 41 by the competent authorities when they consider that it does not fully represent the ORC position of the institutions, taking into account, in particular, the following elements:

    a. the difference between institutions' ORC determination and the competent authorities 'adjusted ORC';

    b. overall evidence or lack of past implementation experience;

    c. the presence or absence of any preparatory measure ahead of the implementation of options;

    d. additional information related to the level of concentration, the timeframe for implementation, the feasibility and credibility of the recovery options as well as the level of stress applied by the institutions;

e. institutions' ability with regard to data availability, quality and aggregation as well as institutions' governance in terms of crisis management preparedness.

44. 'Weak' ORC should lead either to the assessment of a material deficiency in the recovery plan in accordance with Article 6 of Directive 2014/59/EU or to the identification of a specific area of improvement related to the ORC in the competent authorities' assessment of the institutions' recovery plan.

45. 'Adequate with potential room for improvement' ORC may lead to the identification of a specific area of improvement related to the ORC in the competent authorities' assessment of the institutions' recovery plan.

46. When carrying out the assessment of the identification of a material deficiency or a specific area of improvement in the recovery plan related to the ORC according to paragraphs 44 and 45, competent authorities should take into account the following non-exhaustive situations:

    a. whether the institution already operates in severe stressed conditions, including where a capital conservation plan in accordance with Article 142 of Directive 2013/36/EU has been requested;

    b. whether the institution has already improved the ORC compared to previous recovery plans and there is no longer room for ORC potential improvement given the size, business model and risk profile of the institution;

    c. whether the institution's capital, leverage and/or liquidity position displays sound headroom with respect to the regulatory requirements and therefore the scenarios employed by the institution are extremely severe and thus too penalising with respect to peers.

47. The classification referred to in paragraphs 41 to 43 should support the assessment of the ORC by competent authorities as a relevant component of their overall recovery plan assessment.

4. Accompanying documents

4.1 Cost-benefit analysis / impact assessment

As per Article 16(2) of Regulation (EU) No 1093/2010 (EBA Regulation), any guidelines and recommendations developed by the EBA are to be accompanied by an impact assessment (IA) which analyses 'the potential related costs and benefits'.

This analysis presents the IA of the main policy options included in the Guidelines on overall recovery capacity in recovery planning. The analysis provides an overview of the identified problem, the proposed options to address this problem as well as the potential impact of these options. The IA is high-level and qualitative in nature.

A. Problem identification and background

In accordance with Section A of the Directive 2014/59/EU Annex, institutions are expected to include a summary of their ORC within their recovery plans. The role of the ORC as a summary measure within recovery plans is also bolstered by Article 12 of Commission Delegated Regulation (EU) 2016/1075. The same Commission delegated regulation, in accordance with Article 4, also gives competent authorities the task of assessing the information contained in the recovery plan submitted by the institutions, thereby including the ORC.

The concept of the ORC is described in high-level terms in Article 12 of Commission Delegated Regulation (EU) 2016/1075 as 'the extent to which the recovery options allow that entity or those entities to recover in a range of scenarios of severe macroeconomic and financial stress' and with no detailed guidance on the relevant steps underlying its determination. The lack of more practical guidelines has led to several different practices across institutions, resulting in some cases in the non-representation of this measure despite the aforementioned regulatory requirements. This situation has been outlined by an EBA survey conducted among competent authorities on the current state of play of the ORC within the recovery plan of the institutions. This survey also highlighted that, in light of the divergent practices among institutions, the ORC assessment by competent authorities is carried out in a not fully consistent manner both in terms of the nature of the review (e.g. whether the assessment is coupled with a proper challenge of the institutions' ORC) and scope (e.g. including the selection criteria for the recovery options by the institutions or the relevant time horizon for the ORC determination).

These practices, both at the level of institutions and competent authorities, jeopardise the ORC as a meaningful summary indicator of 'recoverability'.

B. Policy objectives

The aim of the guidelines is to enhance the quality and the harmonisation of the ORC as a meaningful summary indicator of 'recoverability'. For this, as explained above, it needs to be determined and consistently summarised by institutions, as well as soundly assessed by competent authorities.

Therefore, these EBA own-initiative guidelines, addressed to both institutions and competent authorities, aim to provide:

1) a sound framework for institutions by outlining the relevant steps they are expected to perform to come up with a sound determination of their ORC in a range of severe stress scenarios;

2) a consistent competent supervisory authorities' assessment of the institutions' ORC as part of the overall supervisory assessment of the recovery plan.

C. Options considered, assessment of the options and preferred options

Section C presents the main policy options discussed and the decisions made by the EBA during the development of the guidelines. Advantages and disadvantages, as well as potential costs and benefits from the qualitative perspective of the policy options and the preferred options resulting from this analysis, are provided.

Range of scenarios of severe macroeconomic and financial stress

The EBA considered three policy options when assessing the level of severity to be attained by the stressed scenarios to be relevant for the ORC quantification.

Option 1a: do not provide any additional guidance regarding the severity of the relevant scenarios for the ORC quantification.

Option 1b: specify that relevant scenarios for the ORC determination should lead to the breach of the relevant capital or leverage or liquidity regulatory requirements[18] **if recovery options were not implemented ('unmanaged case').**

Option 1c: specify that relevant scenarios for the ORC quantification should lead either to:

a) the breach of the relevant capital or leverage or liquidity regulatory requirements (option 1b), or

[18] Respectively the total SREP capital requirement (TSCR) or total SREP leverage ratio requirement (TSLRR) as defined in the EBA SREP guidelines (EBA/GL/2022/03 or any other version updating them, if any) or liquidity regulatory requirements as defined according to the outcome of the SREP assessment (i.e. LCR and/or NSFR 100% threshold including any relevant addition as a result of the SREP), including the cases where multiple breaches of these requirements occur.

b) **the breach of the relevant recovery plan indicators referring to capital (including leverage) and liquidity ('relevant RP indicators') thresholds**

based on the baseline level (i.e. starting point before the stressed scenario) of the 'relevant RP indicators' of the institution.

In accordance with Commission Delegated Regulation (EU) 2016/1075, the recovery options need to be quantified in different severe stressed conditions that should lead the institutions to the 'near-default' point, which is not further detailed in the current regulation. According to the internal survey conducted by the EBA, different interpretations by institutions are currently observed and this is an element leading to divergent practices in the ORC determination. Providing guidance in this respect is thus necessary and that is why option 1a was not chosen and discussions were then held on options 1b and 1c, which both set severity thresholds that should generally be met.

Option 1b specifies that severe scenarios for the ORC quantification should be scenarios that lead to the breach of the relevant requirements of the institution in the 'unmanaged case'. The underlying rationale under option 1b is that most severe scenarios would allow assessment of the proper use and impact of the entire set of institutions' credible and feasible recovery options, therefore representing the most effective way of testing these options and the 'recoverability' built upon them. It is recognised that for certain types of institution it may be extremely difficult to design such a scenario while preserving a fully plausible setting and without adopting extremely far-reaching assumptions. Therefore, this option embeds a conditional residual flexibility for capital and leverage requirements. This flexibility implies the possibility to design a scenario which does not breach the aforementioned regulatory minima, provided that a satisfactory and detailed explanation on why the envisaged scenario should be considered severe enough is provided to the competent authorities. In such cases, it is anyway expected that the scenario should lead to the 'near-default' point and therefore be severe enough to allow the appropriate testing of the recovery plan assumptions.

According to option 1c, the level of severity attained by the ORC scenarios should be differentiated based on the baseline level of the institutions' 'relevant RP indicators'. On the one hand, it is acknowledged that this approach would have led to a more tailor-made specification of scenario severity. On the other hand, the recovery options will be stressed under less severe conditions than in option 1b and the breach of one or more recovery plan indicator thresholds would not automatically trigger the implementation of any recovery options which therefore institutions may even decide not to apply in that specific scenario. In addition, even though the simple setting of the severity threshold as foreseen in both options 1b and 1c would harmonise the ORC quantification amongst institutions, the choice of the regulatory threshold as disclosed in option 1b will increase this harmonisation and allow better consistency between institutions. Since one of the main purposes of the recovery plan is to assess the institution's 'recoverability' in terms of its capacity to restore its business and financial viability in extremely severe conditions, option 1b is the preferred option compared to option 1c.

Based on the above considerations, option 1b has been chosen as the preferred option.

Timeframe

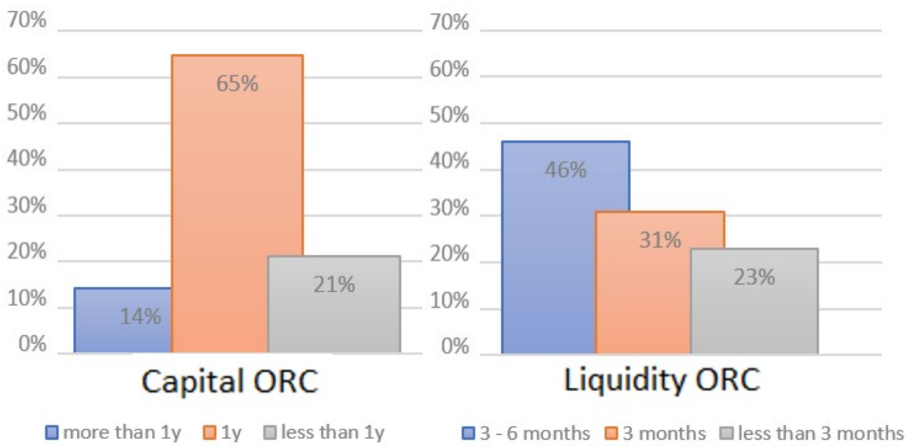
When calculating the 'scenario-specific recovery capacity', institutions should consider the timeframe associated with the impact of the recovery options. The EBA considered two policy options regarding the relevant timeframe for the ORC quantification.

Option 2a: not to provide any relevant timeframe to take into account for the impact of the implementation of the recovery options over time.

Option 2b: to provide a maximum timeframe to take into account for the impact of the implementation of the recovery options over time.

The survey conducted by the EBA allowed to verify that generally for capital generation the considered time horizon is equal to one year for most institutions; the time decreases to between three and six months for liquidity.

Figure 1: Time horizon for ORC assessment



Source: EBA survey

Option 2b was considered the preferred one as it should lead to greater harmonisation without causing a significant increase in costs. In fact, the guidelines set 18 and 6 months for the time horizon to be considered for an impact on the capital/leverage position and on the liquidity position respectively. This is broadly in line with the practices already adopted by most of the institutions. Following the public consultation, the time horizon for the impact of the recovery options on the capital/leverage position has been extended from 12 to 18 months to take into account that there might be options (such as those related to the disposal of an entity or a business) whose implementation may require a longer period of time.

Competent authorities' assessment

According to the survey conducted by the EBA, most of the competent authorities review the institutions' ORC, but the approaches adopted in conducting their assessments differ under some aspects. The EBA considered two policy options.

Option 3a: not to provide any guidelines for the competent authorities.

Option 3b: to provide a set of general principles aimed at increasing the harmonisation of the assessments.

Option 3b could lead to additional costs as it implies an increase in analysis activities for the competent authorities. However, a harmonisation of the assessment conducted by the competent authorities was considered a key aspect for ensuring the credibility and increasing the usability of the ORC.

D. Conclusion

The technical specifications provided by the guidelines increase the harmonisation across institutions for the purpose of determining the ORC, fostering consistency and a harmonised supervisory approach benefiting both institutions and competent authorities. The respective gains of efficiency from better consistency across institutions' practices will benefit the quality of the assessments on a permanent basis. For the institutions, these specifications are expected to trigger costs but not material impacts as they enhance an already established process without creating a new one. The vast majority of competent authorities are already reviewing and challenging institutions' ORC determination, notably by requiring adjustments, therefore the impact of the guidelines on the calculation process is not expected to be significant, except for those competent authorities that focus exclusively on the recovery option impacts, i.e. not challenging the whole ORC but some of its components, in which the impact of the guidelines on the calculation process could be moderate. Overall, the impact assessment on the guidelines suggests that the expected benefits of the guidelines are higher than the costs expected to be incurred.

4.2 Feedback on the public consultation

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

The consultation period lasted for three months and ended on 14 March 2023. Nine responses were received, of which eight were published on the EBA website.

This paper presents a summary of the key points and other comments arising from the consultation, the analysis and discussion triggered by these comments and the actions taken to address them if deemed necessary.

In many cases several industry bodies made similar comments, or the same body repeated its comments in the response to different questions. In such cases, the comments and EBA analysis are included in the section of this paper where the EBA considers them most appropriate.

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

Summary of key issues and the EBA's response

The comments received by the EBA touched upon a broad range of areas covered in the guidelines and more specifically: (i) scope of application, (ii) severity of the scenarios, (iii) expected timeframe for taking into account recovery option benefits, (iv) starting point for the ORC determination as well as the competent authorities' assessment of the ORC and the related ORC score. Various respondents requested clarifications on these topics. Following the requests received during the public consultation, clarifications were therefore provided either in the feedback table or, where appropriate, by changing some relevant paragraphs of the guidelines.

Many respondents argued that the level of the severity envisaged by the guidelines for the capital purpose is too harsh, more similar to a resolution than to a recovery scenario, and that this would frequently lead to the simulation of implausible scenarios. As such, the application of the exception provided in the guidelines would be more a rule than an exception. Furthermore, it has been also underlined that scenarios in which institutions would let their capital or leverage ratios deteriorate to TSCR or TSLRR levels without exercising any recovery option would be unrealistic and ultimately inconsistent with the calibration level of the recovery plan indicators as provided in the related EBA guidelines.

The EBA believes that the proposed approach is appropriate considering that 1) recovery scenarios are expected to lead institutions to 'near-default' unless the recovery actions were successfully implemented and 2) only severe enough scenarios will allow the implementation of all the credible and feasible recovery options by the institutions, thus enabling the proper testing of the recovery plan assumptions. Furthermore, limited flexibility to deviate from the proposed requirement is allowed if the institution can reasonably demonstrate that the 'near-default' point would be reached anyway without the breach of the capital or leverage requirements. This flexibility would need to take into account the specific features of the institution, for instance in terms of its capital and leverage requirement starting points, while drawing a very severe although plausible scenario. It has been also further clarified that the breach of TSCR or TSLRR would occur only in the case of no recovery options implementation by the institutions (the so-called 'unmanaged case'). As such, institutions are expected to react sufficiently in advance with respect to the full materialisation of the scenario by implementing their recovery options – whenever deemed necessary – having in mind the framework designed in the relevant EBA guidelines for the calibration of the recovery plan indicators.

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

Comments	Summary of responses received	EBA analysis	Amendments to the proposals
General comments			
Date of application	Several respondents asked for sufficient time to implement the guidelines, flagging the need to harmonise the implementation across institutions having different recovery planning cycles and provide them with the same time horizon to reflect the new set of expectations. In this respect, it was suggested that the guidelines should not enter into force until 1 January 2024.	The date of application of these guidelines is set in line with the standard application time as per any EBA guidelines and as specified in Title 3 of these guidelines. The EBA does not consider that an explicitly prolonged timeline should be introduced considering that these guidelines are not introducing a new element per se, as the ORC concept has been already addressed in Directive 2014/59/EU and in Commission Delegated Regulation (EU) 2016/1075 and hence its implementation is not expected to be so impactful as to require an extended timeline for the date of application.	No change.
Scope of application	Some respondents observed that paragraph 8 of the Consultation Paper would suggest that recovery plans and the related ORC are expected to be developed at the level of subsidiaries. In their opinion this could lead to a) discrepancies vis-à-vis the way banking groups are generally organised and b) confusion with the way resolution is designed with regard to groups with single point of entry strategies or groups with multiple point of entry strategies.	The guidelines do not change the level of application of recovery plans, which is set out in Directive 2014/59/EU. The EBA's expectation is that the ORC is determined at the level of the group, i.e. the same level of application of the recovery plan in accordance with Article 7(1) of Directive 2014/59/EU. The reference to the subsidiary intends to take into consideration, where relevant, the contribution of the subsidiaries to the ORC, for instance in terms of recovery options which may involve the sale of a specific subsidiary, or the ORC of the subsidiary in the case of an individual recovery plan where this is required in accordance with Article 7(2) of Directive 2014/59/EU.	No change.

Comments	Summary of responses received	EBA analysis	Amendments to the proposals
Proportionality	One respondent observed that building a wide set of options for calibrating the ORC scope will significantly increase the workload for smaller credit institutions. It was argued that the ORC expectation may give rise to the risk of being unable to appropriately develop it in time to meet the deadlines for the recovery plan submission to supervisors. Similarly, one respondent stated that the introduction of the ORC range requirement may be an excessive measure as it would add to the complexity of the recovery plan. It was also suggested that the ORC requirements for cooperative banks are made more lenient, especially if they are members of the Institutional Protection Scheme (IPS).	The requirement to provide a summary of the overall recovery capacity has not been introduced by these guidelines as it is already explicitly included in Section A of Directive 2014/59/EU and Article 12 of Commission Delegated Regulation (EU) 2016/1075. Therefore, institutions are expected to have already incorporated the ORC into their recovery plans. Proportionality aspects are explicitly addressed in the guidelines with regard to business model specificities, providing for investment firms a potentially reduced scope of application regarding the 'relevant RP indicators' to be represented and the related ORC assessment. In addition, proportionality is also applied with respect to institutions being subject to simplified obligations in accordance with Article 4 of Directive 2014/59/EU as for those institutions part or the entirety of the provisions contained in these guidelines could be waived depending on the degree of simplification approved by the competent authority.	No change.
Transparency	Some respondents suggested that competent authorities should make available to institutions the criteria underlying the supervisory assessment of the ORC, including the credibility and feasibility assessment of the recovery options, and apply them consistently to institutions so as to ensure a level playing field. It was also suggested that competent authorities provide institutions with comprehensive feedback on all adjustments to the ORC that have been performed in order to allow institutions to	The assessment of the ORC and its components including recovery options from competent authorities is a comprehensive assessment involving quantitative and qualitative considerations and it is not the result of applying a mechanistic approach. However, it is expected that, as part of the supervisory dialogue including feedback on the assessment of the recovery plan, the competent authority will engage with the institution and explain the reasoning and considerations underlying the assessment.	No change.

Comments	Summary of responses received	EBA analysis	Amendments to the proposals
	clearly understand the rationale and actions that could be enacted to improve the ORC.		
Responses to questions in Consultation Paper EBA/CP/2022/15			
Question 1. Do you have any comments on the general factors to be considered when assessing the credibility and feasibility of the recovery options?	Respondents asked to make cross-reference to the relevant Commission Delegated Regulation articles without making any changes or additions. It was also suggested that competent authorities consider adopting common standards for individual options reflecting the specific nature of particular countries and markets.	Rather than adding new elements, the guidelines clarify some aspects that institutions should take into consideration when making their assessment of the credibility and feasibility of the recovery options within the recovery plans. The EBA believes that the current high-level principles provided in the guidelines allow an appropriate balance to be struck between the need to harmonise the credibility and feasibility assessment and the flexibility which should be allowed to take into account institutions' specificities (for instance in terms of size, complexity, business model and risk profile) that may be relevant in this respect. Cross-reference to the relevant articles of Commission Delegated Regulation (EU) 2016/1075 has been added in paragraph 17.	Amendment to paragraph 17.
	Some respondents asked to clarify the assessment of the expected external impact on the key stakeholders as well as any anticipated impact of the execution of the recovery option on the financial system, vis-à-vis the analysis of the continuity of critical functions within the recovery plan.	In terms of the aspects to consider with regard to the credibility and feasibility of recovery options, the reference in paragraph 18a has been included to cover the specific aspect of the assessment of the 'credibility' of recovery options. It is essential in fact that institutions assess, for example, whether the implementation of an option could be credible or not because of its potential impact on the stability of the financial system. The analysis of the continuity of critical functions covers a different aspect as it is instead focused on assessing whether the implementation of the recovery option could affect	

Comments	Summary of responses received	EBA analysis	Amendments to the proposals
		the ability of the institution to continue providing a critical function.	
Question 2. Do you have any comments on the specification of the scenario severity for the purpose of calculating the 'scenario-specific recovery capacity'?	Many respondents argued that the level of severity specified in the guidelines regarding the capital dimension is too severe ('closer to a resolution than to a recovery scenario') and would force institutions to design scenarios based on very far-reaching and implausible assumptions. Moreover, it was also highlighted that the severity threshold could be an incentive for banks to be less prudent in business-as-usual risk management (e.g. setting of recovery indicator thresholds, management buffers, etc.) and that this would create an unlevel playing field between well capitalised and less well capitalised banks as the former would have to design very extreme and unrealistic scenarios. Respondents suggest revising the current provision stated in paragraph 21, not specifically linking the severity level with the capital and leverage regulatory requirements.	The EBA acknowledges that an appropriate balance between the severity and the plausibility of the recovery plan scenarios should be achieved. Likewise, it is, however, deemed relevant that the ORC determination is based on severe assumptions and scenarios, such that they would threaten the viability of the institutions as stated in EBA/GL/2014/06 on the range of scenarios to be used in recovery plans. Bearing these aspects in mind, the EBA opinion is that the proposed approach, with the possibility to deviate from the fixed level of severity if the institution can appropriately demonstrate that the viability of its businesses would be threatened even before the said breach, is a good way to balance the trade-off between the severity and plausibility of scenarios. As per the reference to the potential unlevel playing field between institutions based on their capital/leverage headroom, the flexibility provided is meant to appropriately allow institutions to reflect these considerations in case they are not able to draw up a plausible scenario breaching the regulatory requirements.	Clarification on the 'Background and rationale'.
	Several respondents argued that the 'near-default' requirement appears inconsistent and in conflict with the EBA Guidelines on recovery plan indicators (2021), where it is stated that 'generally, capital indicators should be calibrated above the combined capital buffer requirement'.	The EBA considers that the guidelines on the ORC are not in conflict with EBA/GL/2021/11 on recovery plan indicators under Article 9 of Directive 2014/59/EU, as the latter refer to the calibration of the recovery plan indicators and not to the severity of the scenarios. More specifically, the breach of the regulatory	

Comments	Summary of responses received	EBA analysis	Amendments to the proposals
		requirements provided in these guidelines is expected to take place only in the case of no recovery options implementation by the institution (the 'unmanaged case'). The timely implementation of the recovery options in line with the framework set out in EBA/GL/2021/11 is meant to prevent the occurrence of such a breach, thus showing the ability of the institution to restore its financial position in an adverse setting. The 'Background and rationale' section has been amended to further clarify this aspect.	
	Some respondents suggested better clarifying the cases where a lower severity of the scenarios could be accepted by competent authorities and in any case not restricting to a limited number of institutions the possibility to apply the exception. It was also asked that the flexibility provided be extended to liquidity requirements.	Given that considerations on viability are by their nature specific to the institution, they should be reflected in an ad hoc assessment performed by institutions to allow the competent authority to assess the existence of the requirement. Therefore, no stricter or quantitative criteria (e.g. including a fixed maximum capital depletion that can be considered sufficient to qualify a severe scenario) can be provided in this respect. As already clarified in the 'Background and rationale' section, no residual flexibility is provided for liquidity regulatory requirements as they could always be theoretically subject to extremely fast and unexpected acute depletion.	
	Some respondents asked to clarify whether the breach of the requirement set out in paragraph 21 is supposed to occur jointly (and) or not (or).	The requirement set out in paragraph 20 is fulfilled if at least one of the listed capital/leverage or liquidity requirements is breached. This will depend on the specific nature of the scenario in line with	

Comments	Summary of responses received	EBA analysis	Amendments to the proposals
		EBA/GL/2014/06 on the range of scenarios to be used in recovery plans.	
	Respondents also suggested that there is a lack of consideration of the impact on macroprudential buffers. It was specifically argued that the MDA level should decrease during a period of stress due to a decrease of the countercyclical buffer. This would lead in parallel to a decrease in the overall capital requirement and as such to a decrease of the recovery indicator. Therefore, flexibility should be provided for adapted recovery indicators before a crisis, compared to during/after a crisis. Hence, the ORC should be tested against a reduced 'post-crisis' overall capital requirement and not against the current one.	The EBA recognises that prudential requirements may change over time in a specific time horizon, including in potential cases of crisis. However, since it is not possible to envisage in advance their evolution over time, the preferred option is to remain with the more conservative assumptions that they will be maintained at a constant level. Furthermore, it should also be taken into account that recovery plan indicators are not expected to be automatically recalibrated based on the change of the underlying requirements in accordance with the EBA Guidelines on recovery plan indicators. As such, the recalibration of the recovery plan indicators resulting from a reduction of the regulatory requirements should not be automatically assumed.	
	Finally, one respondent highlighted that profitability ratios should be considered as they represent the key reason for the activation of the recovery plan and, as such, should be explicitly considered when considering the severity of the scenarios.	Profitability is one of the relevant dimensions when assessing the viability of an institution's business. However, it appears arguable that a lack of profitability per se, if not followed or accompanied by a significant capital or liquidity depletion, may be sufficient to ensure that scenarios are severe enough to threaten the viability of an institution. As regards the activation of the recovery plan, paragraph 22 states that institutions should consider as a starting point the breach of any relevant indicator, thus also including those related to profitability. Regardless of the nature of the indicators triggering the activation of the plan, it is, however, expected that the scenarios would have a material impact on the capital including	

Comments	Summary of responses received	EBA analysis	Amendments to the proposals
		leverage and/or liquidity indicators so that the capital and liquidity ORC can be appropriately determined.	
Question 3. Do you agree with the proposed criteria for the relevant starting point, timeframe (in particular with regard to the 6-month period for the LCR and NSFR) and representative indicators (in particular with regard to the explicit consideration of potential other/substitute indicators – e.g. MREL) for the 'scenario-specific recovery capacity'?	Some respondents were of the view that the guidelines' assumption to use the breach of a recovery indicator as the starting point would lead to the exclusion from the ORC computation of measures that institutions could take in the normal course of business before the recovery plan indicator has been met.	Fixing a common starting point for the ORC determination is necessary to consistently set the relevant timeframe within which the timely implementation of recovery options is expected to deliver its benefits. Given the role of the recovery plan indicators, the breach of the related threshold is considered the most common starting point for activation of the recovery options on the basis of the correct calibration of the recovery plan indicators. In this respect, it is also relevant to bear in mind that, according to EBA/GL/2021/11, recovery indicators should be calibrated at a level such that they would allow the timely implementation of the recovery options early enough to be effective. However, the EBA recognises that an institution may take action under its recovery plan where the relevant indicator has not been met, but where the management body of the institution considers it to be appropriate in the circumstances in accordance with Article 9 of Directive 2014/59/EU. As such, it has been clarified in the 'Background and rationale' section that, in those cases, the quantitative impact stemming from these types of action may be included in the initial 'scenario-specific recovery capacity' from the defined starting point as indicated in paragraph 22. Notwithstanding the above, the breach of the recovery plan indicators and the subsequent implementation of the recovery options are expected to remain the starting point of ORC determination.	Amendments to the 'Background and rationale' section and to paragraph 24.

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	Respondents sought confirmation that for combined scenarios the 'starting point' for capital and liquidity ORC is the first breach of a relevant indicator (whether capital or liquidity).	Paragraph 20 makes no distinction between recovery plan indicators ('the breach of any recovery plan indicator'). Therefore, the starting point corresponds to the breach of the relevant indicator triggering the activation of the recovery options regardless of its nature (i.e. capital, liquidity, profitability, asset quality, market-based or macroeconomic).	
	Various respondents underlined that the proposed timeframe for the implementation of specific types of option may not be enough to allow consideration of their effects in full, thus proposing to extend the currently provided time horizons. Other respondents highlighted that the timeframe can be very dependent on the scenarios designed by the institutions and hence no predetermined time horizon should be provided.	The EBA agrees that there may be recovery options (such as those related to the disposal of an entity or a business) whose implementation may be more complex and time-intensive. Therefore, the timeframe for the implementation for recovery options impacting on capital has been extended from 12 to 18 months. Paragraph 24 has been amended to reflect this change. No amendment is provided when it comes to the impact on the liquidity profile as this can be more easily subject to faster and acute depletion that may trigger the activation of recovery options also in a matter of days.	
	Some respondents suggested not including the NSFR in the list of 'relevant RP indicators'. It was argued that this indicator represents a structural issue that can be handled at a post-recovery stage and that in any case would not be highly impacted nor restored in the 6-month timeframe provided for the impact of the recovery options on the liquidity side.	As for the inclusion of the NSFR indicator, this remains a binding minimum liquidity requirement. As such, the indicator is maintained in the minimum list of 'relevant RP indicators'. Based on the specific nature of the scenario (e.g. fast vs slow moving) and the related impact on the liquidity profile, the NSFR may be or may not be materially impacted. In any case, the potential impact of the recovery options on this profile is expected to be monitored.	

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	On the types of indicator included in the list, many respondents were in favour of the non-inclusion of the MREL requirement in the minimum list, as in their view: a) it is intended as a buffer whose temporary breach would not in itself necessarily represent a sign of increased risk or financial weakness, b) the capital elements of the MREL are already captured by the other existing recovery plan indicators on capital ratios and c) a potential MREL breach in relation to eligible liabilities only is most likely caused by the inaccessibility of capital markets, which cannot be resolved by the activation of the recovery plan.	The draft Consultation Paper establishes that the ORC should be represented at least as a percentage of some relevant liquidity and capital regulatory requirements. Since the MREL is also a regulatory requirement, it may also be considered to include it in the list of required minimum representation indicators for the ORC. However, the EBA agrees with the majority of respondents that the MREL should not be included in the minimum list of indicators to represent the ORC. In any case, non-inclusion in the minimum required list of indicators would not prevent institutions from adding this indicator to express the ORC as the guidelines require that the ORC is 'at least' represented with capital and liquidity regulatory indicators. The current approach balances the fact that any addition of required relevant indicators will increase the complexity of the framework while allowing additional flexibility in consideration of institution specificities. The link between regulatory capital and liquidity indicators is clear considering that, to calculate the ORC, there is a need to determine the impact on capital and liquidity resulting from the implementation of the recovery option under a range of severe stress scenarios. On this basis, it appears logical to represent the total impact of the implementation of the options at least in terms of the ORC as a percentage of capital and liquidity indicators. While the MREL indicator has links with capital, the impact of recovery options on capital will not necessarily coincide with the impact of recovery options on the MREL considering the different nature and composition of the MREL. As	

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		such, to express the ORC as a percentage of the MREL would need to be carefully interpreted to avoid misleading conclusions.	
Question 4. Do you have any comments on the general steps to be followed for the determination of the ORC?	Some respondents asked for a clarification on the selection of the recovery options for the calculation of the 'scenario-specific recovery capacity' and then the ORC determination. Two points were raised on this topic: 1) Confirmation was requested that all the credible and feasible options that are available in the specific scenario should be considered for the 'scenario-specific recovery capacity' and not the full menu of options included in the plan to restore the viability of the institution. 2) When assessing the credibility and feasibility of the recovery options, ruling out those with low/limited probability of successful implementation for each given scenario, the remaining options under each specific scenario should de facto be considered available and appropriate.	As stated in paragraph 15, the 'scenario-specific recovery capacity' is defined as the sum of the quantitative impacts of each recovery option that would be available and appropriate under each specific scenario. As such, all options meeting these criteria in the specific scenario are expected to be taken into account for the calculation of the 'scenario-specific recovery capacity' and the subsequent ORC determination. The reference to the availability and appropriateness of the recovery options is specific to their use in the ad hoc scenario, as there can be options that are generally credible and feasible for the institution but that could not be used in the specific scenario designed in the recovery plan.	No change.
	Respondents commented on the reputational effects and business model/profitability when assessing the additional constraining factors of the recovery options. In particular, it was argued that introducing reputational effects within the constraining factors is fundamentally inconsistent with the overall recovery capacity concept and purpose, since its inclusion would prevent the activation of the entire set of recovery options as	Implementing several options in combination could reduce their impact as well as leading to impediments or relevant reputational effects due to market signalling effects. This is one of the aspects that is expected to be duly considered when assessing the additional constraining factors attached to the simultaneous implementation of the recovery options. As such, this simultaneous implementation	

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	prescribed for the ORC determination. Similar reasoning is put forward for the consequences for the viability of the institutions' business model, as the implementation of all the recovery options for the ORC would have a significant impact on the bank's business model. One respondent suggested giving preference to recovery options with greater feasibility and/or the strongest effect in the implementation period in the interdependencies assessment. Respondents asked for a clarification on how the ORC is expected to be computed: 3) in terms of the difference between recovery plan indicators with and without recovery option implementation; or 4) in terms of the difference between the indicator at the breach of the recovery threshold and the final level of the indicator.	aspect should be carefully assessed in line with paragraph 29. As for the potential hierarchy relating to option implementation in the case of interdependencies, it should be up to the institution to choose the optimal combination based on its internal assessment. As stated in paragraph 15, the ORC should be determined as a range of the 'scenario-specific recovery capacities', where the 'scenario-specific recovery capacity' is defined as the sum of the quantitative impacts of the recovery options under each specific scenario, represented in terms of institutions' 'relevant RP indicators' referring to capital (including leverage) and liquidity ('relevant RP indicators'). As such, the ORC is expected to be computed in terms of the impact stemming from the implementation of the recovery options.	
Question 5. Do you have any comments on the definition of the ORC as a range between the lowest and the highest 'scenario-specific recovery capacity' both in terms of capital and liquidity?	Respondents generally agreed on the concept of the ORC as a range between the highest and lowest scenario-specific recovery capacity. They also welcomed the possibility to use as a reference value for the ORC determination the business as usual recovery capacity (BAU RC).	The EBA acknowledges that the footnote previously included in the illustrative example on BAU is helpful. Therefore, it has decided to add the same footnote in paragraph 6 of the 'Background and rationale' section.	The footnote has been added to the 'Background and rationale' section.

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	One respondent outlined that a clear distinction between capital and liquidity scenarios might not always be possible due to their interlinkages, therefore it should be clarified that whilst the focus might be on capital or liquidity in some scenarios, there might still be an impact on the other (just not a material one).	The EBA is of the view that, as far as the interlinkage between capital and liquidity impacts and scenarios is concerned, paragraph 31 already clarifies that scenarios should be considered as relevant for the ORC determination where a depletion in terms of capital including leverage (for capital ORC) and/or liquidity (for liquidity ORC) 'relevant RP indicators' has occurred. If the impact coming from the scenario for one dimension is not material, this is not expected to be considered in the ORC determination for that specific dimension.	
Question 6. Do you have any comments on the scope of the assessment of the 'scenario-specific recovery capacity' by the competent authorities?	Respondents outlined that the recovery option assessment regarding credibility and feasibility impact quantification and implementation timelines by the institutions should not lead to a mechanistic application of haircuts by the competent authorities, as all the options presented in the plan should be considered feasible. As such, the application of haircuts is not considered beneficial, as this would be based only on a subjective assessment by the competent authorities. Respondents also highlighted that the reference to peer group analysis both in the haircuts calibration and in deficiency identification does not appear to be appropriate as recovery plans remain institution-specific and therefore not for comparison across institutions.	The review by the competent authorities of the credibility and feasibility assessment is a relevant part of the supervisory assessment of recovery plans in accordance with Article 18 of Directive 2014/59/EU ('the competent authority shall review the following [...] whether the plan contains a sufficient number of plausible and viable recovery options which make it reasonably likely that the institution or group would be able to counter different scenarios of financial distress quickly and effectively'). No mechanistic or automatic application of fixed haircuts is provided for in these guidelines since the EBA is aware of the fact that the assessment by competent authorities will be based on a range of qualitative and quantitative factors. Haircut adjustments could be applied by competent authorities if the likely impact of the recovery options is assessed as not being based on realistic and plausible assumptions and quantification by the institutions. Peer group analysis is simply indicated as a tool that could be used by competent	No change.

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		authorities to support the supervisory assessment of the recovery plan.	
Question 7. Do you have any comments on the proposed ORC score?	Respondents were of the view that the ORC score assessments and benefits are not clear at this stage, and that the 'adjusted ORC' should not be included in the SREP assessment given the lack of comparability across banks.	The ORC is a factor already included in the SREP framework as specified in the last update of the EBA SREP GLs (see paragraph 433 related to the determination of the final P2G and P2G-LR by competent authorities and paragraph 542 of EBA/GL/2022/03). Amendments in this respect are out of the scope of these guidelines. The benefit of these guidelines is that, thanks to a common determination and assessment of this element, its consideration within the current SREP framework will become easier and more consistent.	No change.
	One respondent argued that the guidelines would imply restoration of the recovery plan indicator threshold as a minimum expected ORC level after the implementation of the recovery option, and that this should not necessarily be the case.	The restoration of the recovery plan indicator threshold is not suggested as a minimum expected ORC level. In fact, the ORC score assigned by the competent authorities may be adequate (with no supervisory measures directly associated with this score – paragraph 45: 'may lead') including in the case of restoration of the buffer and anyway can be adjusted based on qualitative considerations.	
Question 8. Do you have any comments on the possibility to identify areas of improvement or material deficiencies related to the competent authorities' assessment of the ORC?	Respondents underlined that the assessment of the ORC can only be a case-by-case exercise and warned against mechanistic comparisons and benchmarking, as the intrinsic difference in the initial situation of the institutions, the diversity of their business models, and the severity of scenarios that will potentially affect their ability to recover	As stated in the 'Background and rationale' section, the objective of the ORC score assignment is to enable competent authorities to consider the evolution of the institutions' ORC over time, fostering consistency and harmonised supervisory approaches. As such, no mechanistic comparisons or benchmarking exercises without taking into account the case-by-case specificities of institutions are	No change.

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	should be taken into account, as well as the number, variety and availability of recovery options.	mentioned or intended by the introduction of the score.	