EBA/GL/2015/03

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Final report

Guidelines on triggers for use of early intervention measures pursuant to Article 27(4) of Directive 2014/59/EU

Contents

1. Executive summary

These Guidelines, developed pursuant to Article 27(4) of Directive 2014/59/EU, are addressed to competent authorities and aim at promoting the consistent application of triggers for the decision on the application of early intervention measures set out in Article 27(1) of Directive 2014/59/EU. The Guidelines provide competent authorities with guidance on the circumstances under which they should consider the application of early intervention measures to institutions. Specifically, the Guidelines identify triggers within the common European supervisory review and evaluation process (SREP) framework, and elaborate on the circumstances prompting the consideration of whether to apply early intervention measures. The Guidelines do not establish any quantitative thresholds for indicators that could be perceived as new levels for regulatory requirements for capital or liquidity.

The triggers provided in these Guidelines do not oblige competent authorities to automatically apply early intervention measures in all cases. Neither do the Guidelines prevent competent authorities from applying early intervention measures where such triggers are not met, but competent authorities see a clear need for early intervention.

The triggers for the decision on the application of early intervention measures established by these Guidelines are closely linked to the outcomes of SREP conducted by the competent authorities in accordance with the EBA Guidelines on the common procedures and methodologies for SREP[1]. In particular, the triggers are based on the scores supporting the outcomes of the assessment of various SREP elements and the Overall SREP assessment indicating any threat to the viability of an institution and whether an institution infringes or may infringe requirements of the relevant EU and national implementing legislation.

The Guidelines recognise that the early intervention measures can also be triggered on the basis of other circumstances which might not be immediately factored into the outcomes of the SREP assessment. In particular, they can be triggered by material changes or anomalies identified in the monitoring of key indicators performed as part of SREP, even before the assessment of the respective SREP element is updated. Moreover, the early intervention measures could be triggered by events of significant importance (significant events) that carry a risk of having a significant, prudential impact on the institution, putting it into a situation where it may infringe the requirements of relevant EU and national implementing legislation.

These Guidelines should be read in conjunction with EBA Guidelines on common procedures and methodologies for SREP and Guidelines on the interpretation of the different circumstances when an institution shall be considered as 'failing or likely to fail'.

[1] EBA/GL/2014/13 of 19 December 2014

The Guidelines have been subject to public consultation and to the opinion of the EBA Banking Stakeholder Group. Competent authorities are expected to apply these Guidelines from 1 January 2016, following the implementation of the EBA Guidelines on common procedures and methodologies for SREP. Implementation of these Guidelines and triggers described in the Guidelines do not prevent competent authorities from applying early intervention measures where such triggers are not met, but competent authorities see a clear need for early intervention.

2. Background and rationale

1. Early intervention constitutes a key component of supervisory action and is defined by the Basel Committee on Banking Supervision ‘Core Principles for Effective Banking Supervision’ in the following way: ‘adopting a forward-looking approach to supervision through early intervention can prevent an identified weakness from developing into a threat to safety and soundness. This is particularly true for highly complex and bank-specific issues (e.g. liquidity risk) where effective supervisory actions must be tailored to a bank’s individual circumstances’.

2. Many competent authorities in the past have developed their own approaches for early intervention in order to strengthen their capability to intervene when the financial situation of an institution is deteriorating, becoming vulnerable, threatening to reach the point of non-viability, and/or presenting a risk to financial stability. In general, a framework of early intervention was complementary to ongoing supervision resulting in the application of supervisory measures based on the outcomes of ongoing supervision.

3. At the EU level, Article 104 of Directive 2013/36/EU already includes a list of supervisory powers that competent authorities can apply at an early stage to address relevant problems faced by institutions based on the results of ongoing supervision. In addition, some Member States have assigned to the competent authorities additional, ‘more intrusive’ measures to complement the Union-wide toolkit. Such measures could be applied both based on ongoing supervision and as a part of early intervention actions.

4. In order to give competent authorities stronger capabilities to handle crises in ailing institutions the new regulatory framework for recovery and resolution introduced an additional common set of early intervention measures. These measures are listed in Article 27(1) of Directive 2014/59/EU and must be available for competent authorities in cases where an institution infringes or is likely in the near future to infringe the requirements of Directive 2013/36/EU or Regulation (EU) No 575/2013, Title II of Directive 2014/65/EU or any of Articles 3 to 7, 14 to 17, and 24, 25 and 26 of Regulation (EU) No 600/2014 and relevant EU and national implementing legislation, i.e. it meets the conditions for early intervention.

5. Directive 2014/59/EU sets out a common European recovery and resolution framework which is composed of three pillars: preparation, early intervention and resolution. The second pillar is composed of the early intervention measures specified in Article 27(1) of Directive 2014/59/EU, the removal of senior management and management body (Article 28) and the appointment of a temporary administrator (Article 29).

6. The additional set of early intervention measures from the recovery and resolution framework is intended to supplement rather than replace the existing supervisory process carried out in accordance with the provisions of Directive 2013/36/EU, and supervisory measures applied based on the outcomes of SREP as provided under Articles 104 and 105 of Directive 2013/36/EU.

7. The EBA was assigned a mandate to issue guidelines promoting the consistent application of the triggers for the decision on the application of early intervention measures identified in Article 27(1) of Directive 2014/59/EU.

8. Assessment of the compliance of an institution with the requirements of Directive 2013/36/EU, Regulation (EU) No 575/2013 and relevant EU and national implementing legislation is also the focus of the SREP as specified in Articles 97 of Directive 2013/36/EU. Pursuant to Article 102 of that Directive, the competent authorities shall apply supervisory measures where there is evidence that the institution does not meet or is likely to infringe the requirements of Directive 2013/36/EU and Regulation (EU) No 575/2013 within 12 months. This implies that there is a clear link between the objective elements prompting the application of both supervisory measures (in the meaning of Directive 2013/36/EU) and early intervention measures. That is to say that the assessment of whether an institution 'infringes or is likely to infringe' the requirements of Regulation (EU) 575/2013 and Directive 2013/36/EU is conducted by competent authorities based on their comprehensive assessment, including by means of SREP as described in Article 97 of Directive 2013/36/EU and further specified in the EBA Guidelines for common procedures and methodologies for SREP.

9. However, the early intervention measures can also be triggered on the basis of other circumstances which may not be immediately factored into the outcomes of the SREP assessment. In particular, they can be triggered by a material change or anomalies identified in the monitoring of key indicators performed as part of SREP, even before the assessment of the respective SREP element is updated. Moreover, the early intervention measures could be triggered by events of significant importance (significant events) that carry a risk of having a significant, prudential impact on the institution.

10. These Guidelines provide competent authorities with guidance on the circumstances under which they should consider the application of early intervention measures towards institutions. Specifically, the Guidelines identify triggers within the proposed common European SREP framework and elaborate on circumstances prompting the consideration of whether to apply early intervention measures. The Guidelines do not establish any

quantitative indicators or their thresholds that could be perceived as new levels for regulatory requirements for capital or liquidity.

11. The triggers provided in these Guidelines do not oblige competent authorities to automatically apply early intervention measures in all cases. On the contrary, the objective of introducing these triggers is to help competent authorities in deciding whether to apply early intervention measures while minimising the risk that their decisions and actions might be challenged by entities under their supervision. The Guidelines also aim at introducing a consistent approach to the triggers for the decision on the application of early intervention measures throughout the European Union. The set of triggers described in these Guidelines does not prevent competent authorities from applying early intervention measures where such triggers are not met, but competent authorities see a clear need for early intervention.

12. The triggers for the decision on whether to apply early intervention measures provided in these Guidelines refer to the application of all measures listed in Article 27(1) of Directive 2014/59/EU without specifying which circumstances should trigger particular measures. Therefore, upon determining that early intervention is appropriate, the competent authorities should choose the most appropriate early intervention measures and act with a response proportionate to particular circumstances.

13. These Guidelines focus on situations where the application of early intervention measures, listed in Article 27(1) of Directive 2014/59/EU, is reasonably likely to be sufficient to remedy an institution's deteriorating situation and where the competent authorities do not consider it necessary to use more severe tools such as: removal of all or individual members of the senior management and management body (pursuant to Article 28 of Directive 2014/59/EU); appointing a temporary administrator (according to Article 29); or the taking of more actions by the resolution authorities such as writing down or converting capital instruments (pursuant to Articles 59-62) or applying resolution tools (according to Articles 31-58).

14. Determining that an institution meets the conditions for early intervention pursuant to Article 27 of Directive 2014/59/EU is also important in the context of applying the intragroup financial support measures.

15. These Guidelines should be read in conjunction with other regulatory products developed by the EBA pursuant to Directive 2014/59/EU (in particular with Guidelines on the interpretation of the different circumstances when an institution shall be considered as 'failing or likely to fail') and also with the EBA Guidelines on common procedures and methodologies for SREP.

3. EBA Guidelines on triggers for the use of early intervention measures

1. Compliance and reporting obligations

Status of these Guidelines

This document contains guidelines issued pursuant to Article 16 of Regulation (EU) No 1093/2010[2]. 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.

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

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 29.09.2015. In the absence of any notification by this deadline, competent authorities will be considered by the EBA to be non-compliant. Notifications should be sent by submitting the form available on the EBA website to compliance@eba.europa.eu with the reference 'EBA/GL/2015/03'. 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.

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

[2] 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

1. According to Article 27(1) of Directive 2014/59/EU, in situations where an institution is infringing or is likely in the near future to infringe the requirements of Regulation (EU) No 575/2013, Directive 2013/36/EU, Title II of Directive 2014/65/EU or any of Articles 3 to 7, 14 to 17, and 24, 25 and 26 of Regulation (EU) No 600/2014, including national legal acts implementing Directive 2013/36/EU or the technical standards developed by the EBA pursuant to the relevant provision of Regulation (EU) No 575/2013 or Directive 2013/36/EU and endorsed by the European Commission, the competent authorities shall have at their disposal at least the set of early intervention measures listed in Article 27(1) of Directive 2014/59/EU, without prejudice to the supervisory powers referred to in Article 104 of Directive 2013/36/EU. Pursuant to Article 27(4) of Directive 2014/59/EU these Guidelines promote the consistent application of the triggers for the decision on the application of such early intervention measures.

2. In order to increase consistency in supervisory practices in relation to the application of such triggers, the Guidelines also clarify requirements that competent authorities should follow when setting thresholds related to financial and risk indicators to be routinely monitored under the supervisory review and evaluation process ('SREP') as specified in the SREP Guidelines, and the procedures to follow in the event of breaches of these thresholds.

3. The Guidelines do not address the interaction between the competent authorities and the resolution authorities in relation to breaches of the triggers, which is already disciplined in Article 27(2) of Directive 2014/59/EU.

4. The assessment of whether an institution 'infringes or is likely to infringe in the near future' the requirements of Regulation (EU) No 575/2013 or of Directive 2013/36/EU is carried out by the competent authorities based on their comprehensive assessment, including by means of SREP as described in Article 97 of Directive 2013/36/EU and further specified in the SREP Guidelines.

Definitions

5. The following definitions apply for the purposes of these Guidelines:

    a. 'Conditions for early intervention' means a situation when an institution infringes or is likely in the near future to infringe the requirements of Regulation (EU) No 575/2013, Directive 2013/36/EU, Title II of Directive 2014/65/EU or any of Articles 3 to 7, 14 to 17, and 24, 25 and 26 of Regulation (EU) No 600/2014 or of relevant EU or national implementing legislation.

b. 'Early intervention measures' means the early intervention measures set out in Article 27(1) of Directive 2014/59/EU.

c. 'SREP' means the supervisory review and evaluation process as defined in Article 97 of Directive 2013/36/EU and further specified in the SREP Guidelines.

d. 'SREP Guidelines' means the EBA Guidelines on common procedures and methodologies for SREP developed in accordance with Article 107(3) of Directive 2013/36/EU[3].

e. 'Overall SREP assessment', as defined in the SREP Guidelines, is the up-to-date assessment of the overall viability of an institution based on an assessment of SREP elements.

f. 'Overall SREP score', as defined in the SREP Guidelines, is the numerical indicator of the overall risk to the viability of an institution based on the Overall SREP assessment.

g. 'SREP element', as defined in the SREP Guidelines, is one of the following components of the SREP framework: business model analysis, assessment of internal governance and institution-wide controls, assessment of risks to capital, SREP capital assessment, assessment of risks to liquidity and funding, and SREP liquidity assessment.

Addressees

6. These Guidelines are addressed to the competent authorities as defined in Article 4(2)(i) of Regulation (EU) No 1093/2010.

3. Triggers for application of early intervention measures

7. These Guidelines identify the following triggers for the competent authorities' decision on whether to apply early intervention measures:

   a. Overall SREP score and pre-defined combinations of the Overall SREP score and scores for individual SREP elements;

   b. material changes or anomalies identified in the monitoring of key financial and non-financial indicators under SREP revealing that the conditions for early intervention are met;

   c. significant events indicating that the conditions for early intervention are met.

[3] EBA/GL/2014/13 of 19 December 2014

8. The breach of the triggers identified in these Guidelines should prompt the competent authorities (a) to further investigate the situation, if the cause of the breach is not yet known, and (b) taking into account the urgency of the situation and the magnitude of the breach within the overall situation of the institution, to make a decision on whether to apply early intervention measures.

9. Breaches of the triggers, outcomes of associated further investigations and decisions on the application of early intervention measures, including the reasons for not taking a measure, should be clearly documented by the competent authorities.

10. Upon the breach of the triggers, when taking a positive decision to apply an early intervention measure, the competent authority should choose the most appropriate early intervention measure or measures to act with a response proportionate to the particular circumstances. For this purpose the competent authority should take into account recovery actions or measures specified in the recovery plan that the institution has taken or has decided to take in the immediate future.

11. When competent authorities assign to an institution an Overall SREP score of '4' they should consider gathering information for the valuation of the institution's assets and liabilities, as provided in Article 27(1)(h) of Directive 2014/59/EU.

3.1 Triggers based on the outcomes of SREP

12. The results of the Overall SREP assessment and specific pre-defined combinations of the results of the Overall SREP assessment and assessment of individual SREP elements, as defined in SREP Guidelines, should be considered triggers.

13. In particular, should the competent authority, as an outcome of SREP, assign to an institution the Overall SREP score of '4' in accordance with the methodology stipulated in the SREP Guidelines, it should, without undue delay, take a decision on whether to apply early intervention measures.

14. In addition, in certain circumstances, the competent authority should also consider the assessment of individual SREP elements resulting in a score of '4'. Such circumstances may arise when there is no high risk to the viability of an institution and the Overall SREP score is '3', but the assessment of the SREP elements covering the specific areas mentioned in Article 27(1) of Directive 2014/59/EU indicates that an institution may meet the conditions for early intervention, resulting in a score of '4' assigned to the corresponding SREP elements.

15. In particular, the competent authority should decide on whether to apply early intervention measures when the outcomes of SREP as performed in accordance with SREP Guidelines take the form of the following combinations of an Overall SREP score of '3' and '4' for individual SREP elements:

a. the Overall SREP score is ‘3’ and the score for internal governance and institution-wide controls is ‘4’;

b. the Overall SREP score is ‘3’ and the score for business model and strategy is ‘4’;

c. the Overall SREP score is ‘3’ and the score for capital adequacy is ‘4’; or,

d. the Overall SREP score is ‘3’ and the score for liquidity adequacy is ‘4’.

16. When deciding whether to apply early intervention measures based on the above SREP scores and choosing the most appropriate measure, competent authorities should address the particular weaknesses identified and highlighted in the narrative of the Overall SREP assessment or the assessment of a particular SREP element.

3.2 Monitoring of key indicators under SREP

17. The SREP process as set out in the SREP Guidelines requires competent authorities to carry out regular monitoring of key financial and non-financial indicators for all institutions. For the purposes of this monitoring, competent authorities need to identify indicators and set thresholds that are relevant to the specificities of individual institutions or groups of institutions sharing similar characteristics (peer groups).

18. When identifying thresholds for the indicators related to prudential requirements, as stipulated in Regulation (EU) No 575/2013, competent authorities should consider both minimum and additional requirements, i.e. minimum own funds requirements as specified in Article 92 of Regulation (EU) No 575/2013 and additional own funds requirements applied pursuant to Article 104(1)(a) of Directive 2013/36/EU without taking into account any buffer requirements set out in Chapter 4 of Title VII of Directive 2013/36/EU; or minimum liquidity requirements as specified in Part Six of Regulation (EU) 575/2013 and Commission Delegated Regulation (EU) No 2015/61[4], as well as additional liquidity requirements applied pursuant to Article 105 of Directive 2013/36/EU.

19. Where competent authorities, for the purpose of monitoring key indicators, set thresholds for capital adequacy indicators at a level of an optional 1.5 percentage points above an institution’s own funds requirements as referred to in Article 27(1) of Directive 2014/59/EU, or any other thresholds, they should consider both own funds requirements, as specified in Article 92 of Regulation (EU) No 575/2013, and additional own funds requirements set in accordance with Article 104(1)(a) of Directive 2013/36/EU as specified in the SREP Guidelines, without taking into account any buffer requirements set out in Chapter 4 of Title VII of Directive 2013/36/EU.

20. Identification of material changes or anomalies in indicators, including breaches of thresholds, should be considered by the competent authority as a prompt for further investigation, and,

[4] Commission Delegated Regulation (EU) No 2015/61 of 10 October 2014, OJ L11, 17.01.2015, p.1

where relevant, they should review the assessment of the relevant SREP element in light of the new information. Specifically, the competent authority should:

1) determine the cause and make an assessment of materiality of the potential prudential impact on an institution, where relevant, engaging in the dialogue with the institution;

2) document the cause(s) and outcomes of the assessment (in order to ensure that SREP procedures are followed by all staff members of the competent authority and to keep track of the results of previous investigations); and

3) review the risk assessment and SREP score, where relevant, in light of any material new findings according to the requirements of the SREP Guidelines.

21. Where an institution's financial condition and risk outlook and SREP score for a particular element deteriorate significantly and impact one of the triggers based on the combination of the Overall SREP score and scores for individual SREP elements (i.e. the conditions described in paragraphs 14-15 are met), the competent authorities should take a decision on whether to apply early intervention measures.

22. Without prejudice to paragraph 21, in certain circumstances material changes or anomalies in indicators may be used directly as triggers for the decision on the application of early intervention measures. In particular, depending on the materiality of the changes or anomalies in indicators, on their causes and materiality of the potential prudential impact on the institution, and provided the institution meets conditions for early intervention, the competent authority, in the interest of time, may decide to apply early intervention measures immediately upon determination of the cause and the overall impact without updating the assessment of the respective SREP element. The assessment of the respective SREP element and Overall SREP assessment should nevertheless be subsequently updated without undue delay.

3.3 Significant events

23. Certain events may have a significant impact on an institution's financial conditions, putting it into a situation where conditions for early intervention are met relatively rapidly.

24. Generally, such events should prompt further investigations of an affected area. In particular, examples of significant events that may put an institution in a situation where conditions for early intervention are met may include:

a. major operational risk events (e.g. rogue trading, fraud, natural disaster, severe IT problems, significant fines imposed on the institutions by public authorities);

b. significant deterioration in the amount of eligible liabilities and own funds held by an institution for the purposes of meeting the minimum requirements for own funds and eligible liabilities (MREL);

c. signals of the need to review the quality of assets and/or conduct independent valuation of specific portfolios/assets, for instance:

    i. outcomes of the assessment of SREP elements, suggesting that there is a concern that assets might be lower than liabilities;

    ii. emphasis of matter paragraph[5] put in an external auditor's opinion on the financial statement of the institution, indicating material uncertainty;

    iii. unfavourable events that occur between the end of the reporting period and date when the financial statement are authorised for issue, which provide evidence of conditions that arose after the reporting period and therefore do not require adjustment/restatement of financial statements (non-adjusting events); for each material category of non-adjusting events the institution should disclose the nature of the event and estimate its financial effect, or make a statement to the effect that such an estimate cannot be made);

    iv. perpetual and material adjustments to the institution's financial statements due to errors in valuation of assets/liabilities and frequent changes in the accounting assumptions.

d. significant outflow of funds, including retail deposits of customers, caused, e.g. by the reputational damage of the institution;

e. unexpected loss of senior management or key staff, who have not been replaced;

f. one or more members of the management body fail to comply with regulatory requirements specified in Directive 2013/36/EU to become or remain a member of the management body;

g. significant rating downgrades by one or more external rating agencies, potentially leading to substantial outflows of funds, inability to renew funding or activation of contractual covenants related to external ratings.

[5] An emphasis of matter paragraph is a type of paragraph in, or section of an external auditor's opinion on financial statements which is added to draw users' attention to a matter which is appropriately presented or disclosed in the financial statements, but which is of such importance that it is fundamental to users' understanding of the financial statements (e.g. information about an uncertainty relating to the future outcome of exceptional litigation or regulatory action; a major catastrophe that has had, or continues to have, a significant effect on the entity's financial position). The emphasis of matter paragraph does not qualify the auditor's opinion; therefore it does not mean that the financial statements do not present a true and fair view of the financial position.

25. Upon becoming aware of the occurrence of a significant event, the competent authority should identify its cause, assess its potential prudential impact on the institution, where relevant, engaging in the dialogue with the institution, and document its assessment.

26. The competent authority should update the risk assessment and score of the respective SREP element in light of any new material findings according to the requirements of the SREP Guidelines. Where, as a result of the updated analysis, the Overall SREP score or combination of the Overall SREP score and scores for SREP elements deteriorates and impacts one of the triggers based on the outcomes of SREP when the conditions specified in paragraphs 14-15 are met, the competent authorities should take a decision on the need to take early intervention measures.

27. Without prejudice to paragraph 26, in certain circumstances significant events may be used directly as triggers for the decision on the application of early intervention measures. In particular, depending on the magnitude of the significant event and on the materiality of the potential prudential impact on the institution and provided the institution meets conditions for early intervention, competent authorities, in the interest of time, may decide to apply early intervention measures immediately upon determination of the cause and the overall impact without updating the assessment of the respective SREP element. The assessment of the respective SREP element and Overall SREP assessment should nevertheless be subsequently updated without undue delay.

28. The fact that a resolution authority commences a consultation process with a competent authority while determining whether an institution is 'failing or likely to fail' should be considered by the competent authority as a significant event prompting assessment as to whether early intervention measures should be applied towards the institution in order to maintain or restore its viability and prevent its failure. Such a situation may occur when the resolution authority is empowered to determine that an institution is 'failing or likely to fail' pursuant to Article 32 of Directive 2014/59/EU.

4. Implementation

29. These Guidelines apply from 1 January 2016.

4. Accompanying documents

4.1. Impact assessment

Introduction

Directive 2014/59/EU requires the EBA to develop Guidelines that promote the consistent application of the triggers for the use of early intervention measures listed in Article 27(1) of that Directive.

In accordance with Article 16(2) of the EBA Regulation (Regulation (EU) No 1093/2010 of the European Parliament and of the Council), any draft guidelines developed by the EBA shall be accompanied by a cost and benefit analysis. This section shall provide the reader with an overview of the findings as regards the problem's identification, the options identified to remove the problem and their potential impacts.

This annex presents the impact assessment of the policy options considered in the Guidelines. Given the nature of the study, the Impact Assessment is high level and qualitative in nature.

Problem definition

The core problem that these Guidelines aim to address is the lack of common rules and practices in applying early intervention measures by competent authorities throughout the EU. Directive 2014/59/EU specifies that such measures should be at the disposal of the competent authorities in cases where the institution infringes or is likely in the near future to infringe the requirements of Regulation (EU) No 575/2013, Directive 2013/36/EU, Title II of Directive 2014/65/EU or any of Articles 3 to 7, 14 to 17, and 24, 25 and 26 of Regulation (EU) No 600/2014, or relevant EU and national implementing legislations. In addition to the general description of the trigger (actual or likely infringement of regulatory requirements), Directive 2014/59/EU provides the following examples of early intervention triggers: a rapidly deteriorating financial condition, including deteriorating liquidity, increasing level of leverage, non-performing loans or concentration of exposures, as assessed on the basis of a set of triggers which may include the institution's own funds requirement plus 1.5 percentage points. With the exception of the last quantitative trigger, such examples are largely subjective and formulated in a general manner. Therefore, there is a risk that Member States would apply different practices in assessing whether an institution is infringing or likely to infringe the regulatory requirements in a way that could require application of early intervention measures. It is reasonable to expect that divergences in triggering early intervention could lead to the following problems:

- Distortions in the functioning of the European banking sector due to suboptimal supervisory decisions. The literature[6] refers to the trade-off between the Type I error of missing the required early intervention (which could also eventually increase the costs of resolving the institution at a later stage) and the Type II error of incorrectly initiating the early intervention.
- Competent authorities abstaining from implementation of early intervention measures if there is a lack of clarity about the circumstances when these actions can be taken. This may lead to the problem of supervisory forbearance and moral hazard.
- Asymmetric information between competent authorities in different Member States when there is a need for cooperation in cross-border cases.
- An uneven playing field for institutions in the EU, i.e. different treatment of various entities belonging to the same cross-border groups due to different supervisory practices.
- Regulatory arbitrage, i.e. institutions may cease their operations in Member States where the regulatory framework is stricter and/or less predictable and relocate to jurisdictions with more favourable regulatory frameworks.

This Impact Assessment presents a qualitative assessment of the alternative options and identifies a set of options that can effectively address the identified problems.

Objectives of the Guidelines

The objective of these Guidelines is to promote the consistent application of the triggers for the use of early intervention measures listed in Directive 2014/59/EU. A central element is the specification of a common set of indicators and conditions which can be used by the competent authorities in all Member States when assessing if there is a need to apply early intervention measures. A common framework is also expected to facilitate cooperation between the competent authorities in EU Member States with regard to cross-border banking groups. The framework ultimately aims to reduce the problem of moral hazard and promote the effective and efficient functioning of the EU banking sector.

Assessment of technical options

When developing these Guidelines the EBA has considered alternative options under two main areas: (A) Link to SREP and its outcomes, and (B) Type of triggers for early intervention – as described below.

A. Link to SREP and its outcomes

Option A1: The assessment of the need to apply early intervention measures is embedded into the SREP process

Option A2: The competent authorities conduct a separate analysis, parallel to SREP, in order to decide whether there is a need to apply early intervention measures

[6] Betz et al. (2013). ‘Predicting Distress in European Banks.’ ECB Working Paper Series, No 1597.

Under Option A1 the assessment of the need to apply early intervention measures will be integrated into a SREP conducted by the competent authorities following the SREP Guidelines and would make extensive use of the SREP results. Embedding the early intervention assessment (i.e. the assessment of whether conditions for early intervention are met) into the SREP process would avoid duplication of supervisory work and eliminate any inconsistencies which may arise from running two separate assessments (especially because the SREP is focused on the assessment of the compliance of an institution with the requirement of Directive 2013/36/EU and Regulation (EU) No 575/2013, which shares a similar objective as the assessment of conditions for early intervention). This approach would also reflect the similar nature of early intervention measures under Directive 2014/59/EU and the supervisory powers under Directive 2013/36/EU which are applied on the same basis as a SREP assessment.

Under Option A2 the competent authorities, in addition to SREP, would also run a separate analysis in order to determine whether there is a need to apply early intervention measures towards an institution. This parallel analysis would not rely on the SREP findings but would instead be based on a distinct set of indicators established solely for the purpose of determining whether the institution is infringing or likely to infringe regulatory requirements in a way that would justify the application of early intervention measures. These distinct indicators would have to be monitored by the competent authorities on a regular basis.

The following table highlights some of the key potential advantages and disadvantages associated with each of the options considered.

Table 1: Potential advantages and disadvantages associated with a link to SREP

	Potential advantages	Potential disadvantages
A1. Assessment embedded into SREP	No duplication of supervisory work	Limitations resulting from the timing of conducting a SREP evaluation and the scope of the information assessed by SREP
	Ensuring continuum and consistency between ongoing supervision of the institution (SREP) and early intervention	Harmonisation is to some extent dependent on the convergence of SREP processed among the Member States and proper calibration of SREP scores
	Applying a similar approach to the one which applies to the supervisory powers listed in Articles 104 and 105 of Directive 2013/36/EU	
A2. Separate assessment	Increased ability to take into account sources of information which are not assessed under SREP or increase the frequency of monitoring of particular factors/indicators	Duplication of supervisory work (administrative and operational costs for competent authorities) and excessive burden on institutions due to information requests and on-site/off-site examinations
	Early intervention triggers may be based on a set of indicators tailored specifically for the purpose of applying early intervention	Inconsistencies and lack of continuum between on-going supervision and early intervention

	measures	
	Harmonisation in triggering early intervention throughout the EU can be achieved even without a full convergence of SREP assessments	

Preferred option

The preferred option applied in these Guidelines is to embed the assessment (if there is a need for early intervention) into the ongoing SREP analysis and to make extensive use of SREP results. Nevertheless, in order to eliminate the potential disadvantages of Option A1 it was decided that early intervention triggers, in certain cases, should also include circumstances which are not immediately factored into the outcomes of the SREP assessments (such as material change or anomalies identified in the monitoring of key indicators, as well as significant events having a negative prudential impact on an institution with the potential to put the institution into a situation where conditions for early intervention will be met). Therefore, the preferred option also includes some elements of Option A2.

B. Type of triggers for early intervention

Option B1: Qualitative Based Framework

Option B2: Quantitative Based Framework

Under Option B1 a qualitative based framework could be developed specifying in a descriptive way the factors which should be considered by the competent authorities when assessing whether there is a need to apply early intervention measures, especially based on the SREP outcomes. Whilst this approach would increase convergence of the supervisory practices throughout the EU, the problems related to a less precise determination of triggers and a high level of discretion available to the competent authorities would remain.

Under Option B2 a quantitative based triggers could be developed by specifying a set of quantitative indicators with predefined thresholds which, if breached, can inform the decisions about the need to apply early intervention measures. The Guidelines could define the quantitative metrics to be applied throughout the EU and establish the appropriate thresholds for triggering early intervention. Alternatively, a model could be developed based on a combination of measurable factors which are seen to be successful predictors of distress in banks. This model could then be used to define a certain threshold which, if breached, could support the determination that early intervention measures should be applied towards an institution.

The following table highlights some of the key potential advantages and disadvantages associated with each of the options considered.

Table 2: Potential advantages and disadvantages associated with the type of triggers for early intervention

	Potential advantages	Potential disadvantages
B1. Qualitative Based Framework	Triggers can encompass factors and circumstances which cannot be easily quantified	This approach places high requirements on the expertise and quality of judgement on the part of competent authorities
	Harmonisation is achieved to a certain extent through the specification of common factors and qualitative triggers	A lack of consistency across jurisdictions leading to an uneven playing field
	A higher level of supervisory discretion can be retained	Regulatory arbitrage, i.e. institutions may cease their operations in Member States where the regulatory framework is less predictable
	The need to select appropriate indicators or to develop and test new models is eliminated	The extensive discretion given to competent authorities does not eliminate the risk of supervisory forbearance
B2. Quantitative Based Framework	Greater convergence is achieved for supervisory activities across jurisdictions	Space for supervisory judgement is limited and competent authorities may be forced to initiate intervention even in cases where they do not agree that it will produce the optimum result
	Clarity and transparency are provided to market participants as well as institutions regarding triggers of early intervention measures	Thresholds for individual quantitative indicators could be considered new regulatory requirements by institutions and markets prompting institutions to stay above the threshold in order to avoid early intervention Markets may easily overreact to situations where an institution approaches any of the quantitative thresholds; this may lead to bank runs
	The problem of excessive regulatory forbearance can be reduced	Using thresholds for individual factors may lead to excessive Type I and Type II errors due to significant diversity across institutions/jurisdictions
		Models based on combinations of factors which can more effectively reduce Type I and Type II errors could be difficult and costly as well as time consuming to develop, test and update

Preferred option

These Guidelines use an approach based on the combination of Qualitative and Quantitative Based Frameworks which can achieve a combination of the benefits associated with options B1 and B2 as well as reduce the costs associated with both options. The approach adopted is based on a set of qualitative factors (Option B1) which also includes the institution's Overall SREP score and SREP scores for individual SREP elements. As a result, the assessment of whether there is a need to apply early intervention measures indirectly takes into account the quantitative risk assessment of the institution and quantitative indicators (Option B2). According to SREP Guidelines each competent authority should establish monitoring systems of key financial and non-financial indicators and set thresholds for the purpose of identifying material changes and anomalies in the behaviour of indicators. When the pre-defined thresholds are breached the competent authorities should investigate the reason and, where relevant, update the Overall SREP score and/or make a decision on the application of early intervention measures. Consequently, in some cases, the Guidelines envisage the possibility to trigger early intervention measures directly on the basis of quantitative indicators monitored under SREP. Nevertheless, the Guidelines do not establish a set of quantitative factors and thresholds which should be applied by the competent authorities throughout the EU.

4.2. Views of the Banking Stakeholder Group (BSG)

The EBA Banking Stakeholder Group (BSG) provided its opinion on the draft Guidelines during the public consultation stage. In particular, the BSG supported the general approach that triggers do not create an automatic application of early intervention measures, but rather support competent authorities in their decision-making process; and where the competent authority chooses to apply an early intervention measure they should apply a measure applicable to the particular situation of the institution and act proportionally.

The BSG highlighted several areas they would like to see addressed in the final Guidelines. A theme which reappeared throughout the response was the suggestion that the Guidelines provide an overall link between recovery plans, recovery indicators, recovery monitoring, the activation of recovery measures and the triggers for early intervention. The BSG proposed that the Guidelines include expectations for communication between the competent authority and the institution (supervisory dialogue), emphasising the need for close coordination between possible recovery actions taken by the institution and early intervention measures that may be taken by the competent authority.

The BSG asked for clarification that the 1.5% threshold above an institution's own fund requirement mentioned in paragraph 26 of the Consultation Paper is not intended to serve as an additional (or new) capital requirement.

The BSG supported the approach to leverage on the SREP outcomes as a potential trigger, but nevertheless questioned whether the scores for all SREP elements proposed are appropriate for triggers for the decision on early intervention measures. In particular, the BSG expressed concerns regarding certain considerations for the used for business model analysis. They also suggested that not all isolated 'significant events' should trigger a decision for the application of early intervention measures. The focus of the competent authority should be on the impact of that event on the institution.

These points, along with feedback from industry respondents, some of which cover the same points made by the BSG, are addressed in the feedback table.

4.3. Feedback on the public consultation and on the opinion of the BSG

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

The consultation period started on 22 September and ended on 22 December 2014. Eleven responses were received, of which nine were published on the EBA website.

The summary of the key points and other comments arising from the consultation, and the analysis and discussion triggered by these comments and the actions taken to address them if deemed necessary, are presented below.

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

Triggers based on SREP outcomes

Respondents supported the approach taken in the Guidelines where a breach of a trigger prompts the decision on whether there is a need to apply early intervention measures and where there is no automatism in the application of a measure. Some respondents felt that certain considerations used for assigning SREP scores (reference to the SREP Guidelines) were not significant enough to cause an institution to meet the conditions for early intervention.

The EBA appreciates the support to the approach of granting room for supervisory judgment in the decision on the activation and choice of early intervention measures using triggers to help in this decision-making process. This process is similar to the application of other supervisory measures based on the outcomes of SREP (see the SREP Guidelines). It is also noted that SREP outcomes, including scores, represent the comprehensive supervisory view on the institutions, and the scores are assigned based on supervisory judgement taking into account scoring criteria provided in the SREP Guidelines. In particular, it is not necessarily up to an institution to fulfil all 'considerations' linked to a particular score.

Triggers based on significant events and monitoring of key indicators

Some respondents wanted concise definitions for significant events. Others disagreed with some of the significant events that were provided as examples in the Consultation Paper. Most respondents expressed concerns about the use and articulation of a trigger of 1.5% of own funds requirements that authorities may use pursuant to Article 27(1) of Directive 2014/59/EU.

In the EBA's opinion, the list of significant events provides examples of potential events that may depend on the magnitude of prudential impact putting an institution into a situation where it could meet the conditions for early intervention in a manner that would not allow for the timely update of the SREP assessments. To address the concerns, however, the list of examples of significant events has been redefined, by removing some events, amending the terminology and adjusting the examples of the specificities of investment firms. The EBA also felt it inappropriate to further define any of the remaining examples of significant events, as the purpose of providing such examples is to illustrate the kinds of events that may prompt the need for early intervention measures without risking a 'tick box' approach.

In regard to the 1.5% trigger proposed in Article 27 of Directive 2014/59/EU, the EBA shares the concerns of not introducing a new level of capital requirements, whilst also recognising the optionality of calibrating the trigger at this level and the objective of proper calibration of any potential triggers recognising minimum and additional prudential requirements stemming from Regulation (EU) 575/2013 and Directive 2013/36/EU.

To this end, the final text of the Guidelines has been clarified with the explanation that any thresholds used by competent authorities for the purposes of monitoring key indicators that are linked to any prudential requirements (own funds or liquidity) should recognise both minimum and additional requirements that are binding to particular institutions, but excluding combined buffer requirements. In relation to the particular example of the 1.5% threshold provided in Article 27 of Directive 2014/59/EU, it was clarified that pursuant to the general provision of considering both minimum and additional own fund requirement, this or any other similar threshold should not include any capital buffer requirements as specified in Chapter 4 of Title VII of Directive 2013/36/EU.

Communication and cooperation

Respondents asked for further specification of how the competent authorities are expected to communicate with the institution once it meets the conditions for early intervention, and whether the competent authority is expected to consider any recovery actions taken by the institution. Some respondents asked for further guidance on communication and cooperation between the competent authority and the resolution authority.

In this regard the EBA would like to clarify that, as the assessment of whether an institution meets conditions for early intervention is conducted within the SREP framework, a dialogue with institutions is organised pursuant to the SREP process as provided in the EBA SREP Guidelines. The text of the Guidelines on early intervention triggers has been clarified with the explanation that for the processes remaining outside the SREP process, in particular in relation to the triggers based on material changes and deteriorations in indicators or significant events, where, in the interest of time, SREP assessments will not be updated, there needs to be a dialogue with institutions regarding investigation of the causes and impacts of the changes or significant events.

With regard to interaction with recovery actions, in accordance with Article 9(1) of Directive 2014/59/EU, institutions are required to notify the competent authority of any action they plan to take as a result of a recovery indicator being met; therefore, the competent authority should always be aware of the recovery options undertaken by each institution. The Guidelines have been updated to reflect that the competent authority should take into account any recovery measures the institution will take when considering the most appropriate action to take if an institution meets the conditions for early intervention.

In the EBA's opinion there is no need to further clarify the interaction between the competent and resolution authorities in regard to application of early intervention measures, as Article 27(2) of Directive 2014/59/EU already requires the competent authority to notify the resolution authority when an early intervention trigger has been met, and make them aware of any action they plan to take as a result.

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

Comments	Summary of responses received	EBA analysis	Amendments to the proposals
General comments			
Role of the authorities	In some cases, respondents implied that the resolution authority would take action in relation to early intervention measures.	The roles of competent and resolution authorities in relation to the application of early intervention measures are clearly set out in Directive 2014/59/EU. Furthermore, the determination of whether an institution infringes or is likely to infringe regulatory obligations is a task for competent authorities, which determine whether an institution meets the conditions for early intervention and, if so, which, if any, measures to take. The competent authority must record their decision and notify the resolution authority.	No changes needed.
Use of triggers	Respondents suggested that certain triggers, for example macroeconomic indicators, should be used alongside other triggers which are more institution-specific, such as triggers related to the institution's capital or liquidity.	The Guidelines provide criteria that competent authorities need to consider when setting up monitoring of key financial and non-financial indicators and setting monitoring thresholds without prescribing any specific indicators. Breaches of the thresholds, and other material changes in the indicators, will be investigated by competent authorities and factored into the update of the SREP assessment, where all circumstances of an institution are considered. When the update of the SREP assessment is skipped in the interest of time, as provided by these Guidelines, and the competent authorities are to decide on the application of early intervention measures solely on the basis of	No changes needed.

Comments	Summary of responses received	EBA analysis	Amendments to the proposals
		information explaining the material change of indicator and its prudential impact, they would need to assess whether this change in the indicator puts the institution into a situation where conditions for early intervention are met, which, for example, might not prove to be a case for a change only in the macro-economic indicator.	
Application to investment firms	A respondent from the non-banking sector suggested better aligning triggers with requirements set out in MiFID and MiFIR for investment firms as these are more appropriate than SREP scores.	The triggers introduced in these Guidelines build on the outcomes of SREP, which also applies to investment firms. However, the EBA recognises that criteria for setting monitoring of key financial-and non-financial indicators, as well as the examples of significant events presented in these Guidelines, may not fully reflect the specificities of investment firms.	The text of the guidelines as regards setting criteria for monitoring of key financial and non-financial indicators has been streamlined to avoid overlaps with SREP Guidelines, which also apply to investment firms. Furthermore, examples of significant events have been reviewed to make them more applicable to investment firms.

Comments	Summary of responses received	EBA analysis	Amendments to the proposals
Responses to questions in Consultation Paper EBA/CP/2014/21			
Question 1. Do you have any general comments on the draft Guidelines on triggers for the use of early intervention measures?	Respondents welcome the approach to defining triggers as decision points for authorities to consider whether to apply early intervention measures. Some respondents proposed that only certain triggers should lead to the use of early intervention measures while others should be used alongside additional, supplementary triggers before determining whether to apply early intervention measures. Respondents generally supported basing the analysis as to whether an institution meets the conditions for early intervention on the outcomes of SREP.	The EBA appreciates the support to the approach of granting room for supervisory judgment in the decision on the activation and choice of early intervention measures using triggers to help in this decision-making process. This process is similar to the application of other supervisory measures based on the outcomes of SREP (see SREP Guidelines). It is also noted that SREP outcomes, including scores, represent the comprehensive supervisory view on the institutions, and the scores are assigned based on supervisory judgement taking into account scoring criteria provided in the SREP Guidelines. In particular, it is not necessarily up to an institution to fulfil all 'considerations' linked to a particular score.	No changes needed.
Question 2. Do you consider the level of detail used in the draft Guidelines to be appropriate?	Most respondents broadly agree with the level of detail provided in the Guidelines. Several respondents suggested the Guidelines set out communication requirements between the competent authority and the institution, when considering the application of early intervention measures. Some respondents also proposed the	The EBA would like to clarify that, as the assessment of whether institutions meet conditions for early intervention is conducted within the SREP framework, dialogue with institutions is organised pursuant to the SREP process as provided in the SREP Guidelines. The Guidelines propose that competent authorities gather additional information as they investigate the cause of a breach and its potential impact on the	The text of these Guidelines has been clarified with the explanation that for processes remaining outside the SREP process, in particular in relation to the triggers based on material

Comments	Summary of responses received	EBA analysis	Amendments to the proposals
	Guidelines contain guidance on communication and cooperation between competent and resolution authorities, when considering applying early intervention measures. Other respondents suggested that final Guidelines provide guidance on the process competent authorities should follow when an early intervention trigger is met. Other respondents pointed out that sufficient detail is provided relating to the SREP process, but the proposed Guidelines lack any detail on some of the anomalies proposed, such as material deterioration. A respondent asked for more clarity on the details of the valuation information that would be gathered by competent authorities when an institution's overall score is changed to a 4 under the SREP. One respondent asked whether the reference to Articles 3 to 7, 14 to 17, and 24 to 26 of (EU) Regulation No 600/2014 was made in error.	institution. This may lead to dialogue with the institution. The Guidelines do not address interaction between the competent and resolution authorities as a result of a trigger being breached, but they note that Article 27(2) of Directive 2014/59/EU requires the competent authority to report any breach to the resolution authority. The Guidelines require that material changes or anomalies in indicators should prompt the authorities to further investigate. What constitutes a material change or anomaly falls to the judgement of the competent authority. This judgement is part of the normal supervision process. The details related to the valuation of assets and liabilities to be carried out are included in Article 36 of Directive 2014/59/EU. The methodology for carrying out the valuation is further specified in EBA RTS. The reference to the articles in (EU) Regulation No 600/2014 is taken directly from Directive 2014/59/EU and was not made in error.	changes and deteriorations in indicators or significant events, where, in the interest of time, SREP assessments will not be updated, there needs to be a dialogue with institutions regarding investigation of the causes and impacts of the changes or significant events. No other changes considered.
Question 3. Do you have any comments on the proposed	Overall, respondents agreed with the link between the outcomes of the SREP with the consideration of whether to apply an	Recovery indicators are set by an institution and used as a basis for internal governance and escalation procedures. Institutions are required to	Language has been added to the Guidelines to reflect that when the

Comments	Summary of responses received	EBA analysis	Amendments to the proposals
specification of early intervention triggers based on the outcomes of SREP?	early intervention measure. One respondent disagreed with the use of SREP scores as a basis for considering whether to apply early intervention measures. Instead, the respondent proposed using the institution's recovery indicators as a basis for monitoring an institution in the context of early intervention. Another respondent suggested a need for further coordination between the early intervention framework and the escalation process in a recovery plan. Several respondents pointed out that not all factors considered in SREP are likely to be relevant to the application of early intervention measures. Respondents suggested that the SREP is a distinct process with a different purpose to considering whether to apply early intervention measures. Some respondents pointed out that the SREP Guidelines lack precision and leave too much discretion in terms of an institution's scores, which could lead to an inconsistent approach for the application of early intervention measures. This could	notify the competent authority of their decision to take action (or not) when a recovery indicator is met (Article 9(1) of BRRD). The supervisory review and evaluation process (SREP) forms the basis for how competent authorities monitor an institution. While the SREP and recovery indicators serve similar, important purposes, the competent authority bases its judgement on an institution's viability on the SREP. We note, however, that the competent authority is also aware of the institution's recovery indicator framework, including escalation procedures, is informed when a recovery indicator is met by the institution, and notified of any related recovery action the institution will take. While not all indicators that feed into the SREP may be equally significant, the Guidelines propose overall scores as the basis for triggers. These overall scores are based on a number of different indicators (see SREP Guidelines). The SREP does require certain judgement to be used by the competent authority. This is part of the normal supervision process, which incorporates monitoring breaches of hard triggers and thresholds alongside judgements based on additional information about the institution gathered by the authorities. The communication of SREP scores to institutions is outside the mandate of these Guidelines and is	competent authority considers whether to apply an early intervention measure, it should take into account recovery actions the institution has taken or has decided to take.

Comments	Summary of responses received	EBA analysis	Amendments to the proposals
	also lead to a lack of clarity for institutions and the market on how early intervention measures would be applied. A respondent suggested a need for greater transparency on communicating SREP scores to banks whilst maintaining the confidentiality of the scores. Respondents supported the approach proposed where a competent authority should apply early intervention measures that would address the specific weaknesses identified in the SREP, when using the SREP as a basis for taking measures. Respondents supported the proposal that a particular SREP score should not automatically lead to early intervention measures being taken.	addressed in the SREP Guidelines.	
Question 4. Do you have any comments on the proposed approach to use material deterioration or anomalies in key indicators in deciding whether	Respondents supported the approach to the use of material deterioration or anomalies in key indicators as triggers for further investigation. Respondents requested that the Guidelines incorporate the need for the competent authority to closely coordinate any immediate application of early intervention measures with the institution's efforts to	The Guidelines state that material deterioration in indicators monitored as part of SREP should prompt the competent authorities (a) to further investigate the situation, if the cause of the breach is not yet known, and (b) taking into account the urgency of the situation and the magnitude of the breach in the context of the overall situation of the institution, to make a decision on whether to apply early intervention measures.	Language has been added to the Guidelines to reflect that when the competent authority considers whether to apply an early intervention measure, it should take into account recovery actions the

Comments	Summary of responses received	EBA analysis	Amendments to the proposals
there is a need to apply early intervention measures?	implement recovery actions, and in fact only apply necessary measures once the institution's efforts to recover have failed. Other respondents suggested that authorities should consider whether the institution's condition will improve before applying any measures, especially in cases where macroeconomic indicators are used. Some respondents proposed that the Guidelines incorporate a process where the authorities of the same group coordinate before applying any measures. A respondent questioned the inclusion of market-based indicators as they do not relate to a worsening of the financial institution's condition or risk profile, and could be misleading in terms of their impact on the institution. Respondents felt that setting objective thresholds would be challenging. Some respondents suggested the (macroeconomic and market-based indicators) should always be used in combination with institution-specific indicators. Respondents raised concerns about the calibration of the trigger of 1.5% above own funds requirements. Respondents suggested that this trigger appears as a	Article 30 of Directive 2014/59/EU sets out the expectations for coordination amongst competent authorities within a supervisory college, starting with the requirement that the competent authority responsible for the institution that meets the conditions for early intervention notify the EBA and all other competent authorities within the college. Market based indicators are included in the monitoring of financial and non-financial indicators as part of SREP to ensure to allow for the triggers which prompt the competent authority to consider whether the institution meets the conditions for early intervention to include factors which may lead to the institution's deterioration. They serve as prompts for the authorities; they do not lead directly to the application of an early intervention measure. The trigger of 1.5% above own funds proposed in Article 27 is an example of a threshold the competent authority may choose to set in relation to capital indicators. In further specifying the use of this trigger, or any other threshold for a trigger the authorities may choose to set, the competent authority should set the trigger taking into account minimum own funds requirements (Pillar 1) and additional own funds requirements (Pillar 2) that are binding to institutions and should be met at all times, but not take into account capital buffers (combined buffer) that can be used in stressed	institution has taken or has decided to take. The text of the guidelines as regards setting criteria for monitoring of key financial and non-financial indicators has been streamlined to avoid overlaps with SREP Guidelines In relation to the use of a 1.5% trigger, the final text of the Guidelines has been clarified with the information that any thresholds used by competent authorities for the purposes of monitoring of key indicators that are linked to any prudential requirements (own funds or liquidity) should recognise both minimum

Comments	Summary of responses received	EBA analysis	Amendments to the proposals
	new regulatory capital requirement, and would require banks to operate at all times above their Pillar 1 and Pillar 2 requirements, and may inhibit a bank's ability to use its buffers without breaching the trigger. Respondents proposed setting the trigger at 1.5% above Pillar 1 requirements, or at the level set out by Article 102 of Directive 2013/36/EU. This would facilitate consistent use of supervisory powers under CRD IV and the BRRD. One respondent asked the EBA to confirm that the competent authority is responsible for the monitoring and escalation procedures described in the Guidelines. It was also suggested that the monitoring systems rely on existing processes where possible, to avoid the duplication of information requests.	conditions. Furthermore, a 1.5% trigger on top of minimum and additional own fund requirements is not an additional regulatory requirement, as the competent authority may set the threshold at the level most relevant for the particular institution, reflecting its actual capital requirements.	and additional requirements that are binding to a particular institution, but excluding combined buffer requirements. In relation to the particular example of the 1.5% threshold provided in Article 27 of Directive 2014/59/EU, it was clarified that pursuant to the general provision of considering both minimum and additional own fund requirement, this or any other similar threshold should not include any capital buffer requirements as specified in Chapter 4 of Title VII of Directive 2013/36/EU.
Question 5. Do you have any comments	Respondents suggested that the definition of significant events needs to be more	In the EBA's opinion, the list of significant events provides examples of potential events that may	The examples of significant events have

Comments	Summary of responses received	EBA analysis	Amendments to the proposals
on the proposed description of significant events that should be considered as possible triggers for the decision on whether to apply early intervention measures?	precise. Respondents also suggested that the examples of significant events which appeared in the draft Guidelines were not all sufficiently likely to put the viability of the institution at risk, and that early intervention should only be considered once the consequences of these events are clear. Some respondents suggested the removal of adverse court rulings, tax litigation, ratings downgrades, complaints by employees, and negative results of investigations. In particular, respondents cautioned that a ratings downgrade can occur as a consequence of a sovereign downgrade, regardless of the institution's exposure to that market. Respondents suggested significant events should only trigger consideration of early intervention measures when the event puts the institution's liquidity and/or capital ratios at risk (or mean that the institution is infringing or likely to infringe the requirements listed in Article 27 of the BRRD. A respondent queried whether considering the use of early intervention measures when an institution is deemed failing or	depend on the magnitude of prudential impact putting an institution into a situation where it could meet the conditions for early intervention in a manner that would not allow for the timely update of the SREP assessments. Competent authorities may consider other events of a similar nature they find relevant. The Guidelines already provide a documenting procedure, and actions for competent authorities to take in the event of significant event. An institution meets the conditions for early intervention when it infringes or is likely to infringe the requirements listed in Article 27 of Directive 2014/59/EU. The purpose of including the time period in between formal reporting periods is to ensure that the competent authority is not constrained by the timeframes set out in the SREP in considering whether an institution meets the conditions for early intervention.	been reviewed and amended also to reflect specificities of investment firms. The text regarding actions of resolution authorities has been amended to clarify that where the resolution authority is authorised to make a determination (on its own initiative) that an institution is failing or likely to fail, while consulting with the competent authority on this determination, the competent authority should be prompted to consider whether the application of an early intervention measure would restore viability to the institution.

Comments	Summary of responses received	EBA analysis	Amendments to the proposals
	likely to fail is too late. A respondent questioned the approach to unfavourable events that occur in between formal reporting periods.		
Question 6. Do you agree with our analysis of the impact of the proposals in this Consultation Paper? If not, can you provide any evidence or data that would explain why you disagree or might further inform our analysis of the likely impacts of the proposal?	One respondent did not agree with the analysis of the impact of the proposals set out in the consultation. They argued that the SREP was not the appropriate framework for the use of early intervention measures, and proposed instead the use of recovery plan indicators.	As described above, recovery indicators are set and monitored by the institution. Competent authorities should be notified by the institution about what action they will take in the case of a recovery indicator being met.	No changes needed.