



BANKING STAKEHOLDER GROUP

EBA/CP/2017/05 CONSULTATION PAPER
DRAFT REGULATORY TECHNICAL STANDARDS ON SIMPLIFIED
OBLIGATIONS UNDER ARTICLE 4(6) OF DIRECTIVE 2014/59/EU

EBA BANKING STAKEHOLDER GROUP RESPONSE

London, August 8th, 2017

General Comments

The EBA Banking Stakeholder Group (BSG) is pleased to respond to the European Banking Authority's consultation on its Draft Regulatory Technical Standards on simplified obligations under Article 4(6) of Directive 2014/59/EU¹.

The BSG is composed of 30 members appointed to represent in balanced proportions credit and investment institutions operating in the Union, their employees' representatives as well as consumers, users of financial services, academics and representatives of SMEs. The Group's role is to help facilitate consultation with stakeholders in areas relevant to the tasks of the EBA.

The BSG strongly supports a Principle of Proportionality that finds a balance between costs and benefits of EU financial regulation.

In its December 2015 report *Proportionality in Banking Regulation*² the BSG specifically addressed issues around proportionality in recovery and resolution planning as follows:

'Another possible source of disproportionate regulation may lay in the inability to recognise the trade-off between, on the one hand, regulation that is designed to lower the probability of bank failure and, on the other hand, regulatory measures (including the bank resolution regime) that are designed to lower the costs of bank failures. If the costs of failure are lowered (through effective bank resolution arrangements), the concern about the probability of failures is lessened.

Consequently, if the costs of bank failures are significantly reduced, regulation to lower the probability of bank failures could be less intensive. Policy makers may prove slow in understanding this new equilibrium.

Bank regulation expanded significantly after the global financial crisis and is now stabilising, creating a need to take stock of how regulation has evolved with particular regard to the key issues of proportionality and complexity.

Both cost and probability of bank failure have lessened with the introduction of the CRD/CRR and BRRD. This implies that supervisory focus should be primarily addressed to the most systemically important banks, whose failure costs would be the largest.

As a result, the concept of simplified obligations for recovery and resolution planning for less systemically important banks is one the BSG wholeheartedly supports.

¹ <https://www.eba.europa.eu/documents/10180/1838747/Consultation+Paper+on+the+draft+RTS+on+simplified+obligations+%28EBA-CP-2017-05%29.pdf>.

² <https://www.eba.europa.eu/documents/10180/807776/European+Banking+Authority+Banking+Stakeholder+Group+Position+paper+on+proportionality.pdf>.

Specific Comments

We support the incorporation of the significant elements of the existing Guidelines, drawn up under Article 4(5) of the Banking Recovery and Resolution Directive³, as Technical Standards, thus increasing harmonisation and reducing compliance costs.

We also support the two stage approach to identify institutions that may be subject to simplified obligations in relation to recovery and resolution planning. We only have a number of minor comments in relation to the proposed Technical Standards and how they build on the existing Guidelines, but suggest that the second stage should be waived for the very smallest banks, below the total asset threshold, as it is highly unlikely that they will be of systemic importance.

Comprehensiveness

The draft RTS comprehensively covers the criteria specified in Article 4(1) of the Directive.

We support the rationalisation of Annex 2 of the current Guidelines as evidenced by Article 2 of the draft RTS. Our view is that Annex 2 of the Guidelines resembles too much to a 'tick-box' exercise rather than a collection of factors which s/he should consider as they form a judgement. We prefer this later approach.

We note however that Article 2 (1)(f) introduces a new consideration, which is 'the different objectives pursued by the recovery and the resolution planning'. We would appreciate a greater understanding of what the EBA has in mind in relation to this qualitative consideration.

De minimis threshold

We note that the *de minimis* threshold is 0.015% of the aggregated amount of total assets of all credit institutions in the Member State. Below this amount authorities may move directly to a qualitative assessment. This threshold is lower than the 0.02% threshold below which an institution may be excluded from the assessment of whether or not it is an 'other systemically important institution' (O-SII) pursuant to the EBA/GL/2014/10⁴.

We suggest that in the interest of simplicity the two thresholds be harmonised at the O-SII 0.02% threshold of total assets of all credit institutions in the Member State.

It is our understanding that the *de minimis* exclusion from the first stage still implies that the second stage of the filtering process, based on qualitative factors

³ EBA Guidelines on the application of simplified obligations under Article 4 of Directive 2014/59/EU (EBA/GL/2015/16). Available at <https://www.eba.europa.eu/documents/10180/1232502/EBA-GL-2015-16+GLs+on+simplified+obligations-EN.pdf/df9b0518-c938-4b09-8670-689ba9ba52c0>

⁴ <https://www.eba.europa.eu/documents/10180/930752/EBA-GL-2014-10+%28Guidelines+on+O-SIIs+Assessment%29.pdf>.

described in Article 2(1) must be applied by the competent authority to the credit institution. Given the almost insignificant *de minimis* threshold that has been set, in the interest of simplicity, we suggest that there should be no further requirement to perform on a systematic basis the qualitative assessment (i.e., the *de minimis* exemption should apply to both stages).

Not to exempt the smallest banks from the second stage would provide uncertainty for their management as to whether they would in fact be required to submit a full recovery and resolution plan or not.

To avoid unintended consequences, the competent authority should be however allowed to apply the qualitative assessment in special circumstances at her/his own discretion.

Investment firms

We support the list of quantitative indicators for investment firms provided in Annex II and the ability, provided for in Article 3 for the threshold score to be set by the competent and resolution authorities. It is conceivable that, given their different perspectives, one authority, more likely the resolution authority, may set a lower threshold. It would be helpful if the RTS expressed the aspiration that both authorities should jointly agree on a single threshold.

We also agree with the list of qualitative assessment factors for investment firms as described in Article 4.