



EBA/CP/2017/05

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# Consultation Paper

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Draft Regulatory Technical Standards on simplified obligations  
under Article 4(6) of Directive 2014/59/EU

# Contents

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<b>1. Responding to this consultation</b>	<b>3</b>
<b>2. Executive summary</b>	<b>4</b>
<b>3. Background and rationale</b>	<b>6</b>
<b>4. Draft regulatory technical standards</b>	<b>10</b>
<b>5. Accompanying documents</b>	<b>25</b>
5.1 Draft cost-benefit analysis / impact assessment	25
5.2 Overview of questions for consultation	32

# 1. Responding to this consultation

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

Comments are most helpful if they:

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

## Submission of responses

To submit your comments, click on the 'send your comments' button on the consultation page by 08.08.2017. Please note that comments submitted after this deadline, or submitted via other means may not be processed.

## Publication of responses

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

## Data protection

The protection of individuals with regard to the processing of personal data by the EBA is based on Regulation (EC) N° 45/2001 of the European Parliament and of the Council of 18 December 2000 as implemented by the EBA in its implementing rules adopted by its Management Board. Further information on data protection can be found under the Legal notice section of the EBA website.

## 2. Executive summary

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This consultation paper sets out the EBA's proposed draft regulatory technical standards (RTS) on the criteria listed in Article 4(1) of Directive 2014/59/EU (the Directive) for the purposes of determining whether institutions should be subject to simplified obligations in relation to recovery and resolution planning.

Pursuant to Article 4(1) of the Directive competent and resolution authorities (the authorities) may simplify the recovery and resolution plans, respectively, (but they cannot waive the obligation to draw up a recovery or resolution plan) with regard to:

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

The assessment of the eligibility for simplified obligations should be made by each authority separately having regard to the impact that the failure of the institution could have on financial markets, on other institutions, on funding conditions, and on the wider economy, and taking account of the criteria set out in Article 4(1) of the Directive (the criteria). The criteria are the nature of the institution's business, shareholding structure, legal form, risk profile, size, legal status, interconnectedness with other institutions or to the financial system in general, the scope and the complexity of its activities, membership of an institutional protection scheme (IPS) or other cooperative mutual solidarity systems, and any exercise of investment services or activities.

Pursuant to Article 4(6) of the Directive, the EBA must develop draft RTS to further specify the criteria for granting simplified obligations. The draft RTS have been developed taking into account, where appropriate and to the extent possible given that national practices are still evolving, experience acquired in the application of the EBA Guidelines on simplified obligations issued under Article 4(5) of the Directive<sup>1</sup>.

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<sup>1</sup> EBA Guidelines on the application of simplified obligations under Article 4 of Directive 2014/59/EU (EBA/GL/2015/16).



According to the draft RTS the authorities should have regard to the criteria by following a 2-stage approach:

- (i) they should select institutions which could potentially benefit from simplified obligations based on a number of quantitative criteria measured on the basis of a set of quantitative indicators; and
- (ii) they should verify whether institutions selected as potentially eligible for simplified obligations in stage 1 also meet the qualitative criteria.

To cater for exceptional cases, the draft RTS provide a short and exhaustive list of exclusions applicable to stage 1 assessment.

The draft RTS promote convergence of practice between the authorities through creating a common framework for assessing institutions' eligibility for simplified obligations. They are also intended to facilitate cooperation among the competent and resolution authorities in conducting these assessments, including as regards cross-border groups.

## Next steps

Following the 3-month consultation, the revised draft RTS will be submitted to the European Commission for endorsement before being published in the Official Journal of the European Union.

## 3. Background and rationale

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### 3.1 Objective

1. The Directive sets out requirements for institutions to draw up and maintain recovery plans on an annual basis, and to provide the resolution authorities with information relevant for the development of resolution plans. The information to be included in the recovery plans is set out in Section A of the Annex to the Directive and is further specified in the Commission Delegated Regulation (EU) 2016/1075<sup>2</sup>. The Directive also sets out requirements for resolution authorities to draw up and maintain resolution plans for institutions on an annual basis. Article 10(7) and Article 12(3) of the Directive provide the information to be included in resolution plans for institutions and groups, respectively, as further specified in the Commission Delegated Regulation (EU) 2016/1075. Article 11 and Section B of the Annex to the Directive list the information resolution authorities may request for the purposes of drawing up and maintaining resolution plans. The Directive further requires resolution authorities to carry out resolvability assessments for institutions and groups (Article 10(2), Article 12(4) and Articles 15 and 16 of the Directive).
2. The requirements regarding recovery planning, resolution planning and resolvability assessments should be applied proportionately, reflecting *inter alia* the systemic importance of the institution concerned. Pursuant to Article 4 of the Directive the authorities should decide the level of detail regarding the relevant requirements for institutions and authorities having regard to the criteria specified in Article 4(1) of the Directive, as further specified in these draft RTS. Competent authorities should make the assessment for recovery planning purposes and resolution authorities should make the assessment for resolution planning purposes, including for the purposes of conducting resolvability assessments. Competent authorities and, where relevant, resolution authorities shall make the assessment after consulting, where appropriate, the macro-prudential authority (Article 4(2) of the Directive).
3. The authorities may decide to apply simplified obligations for institutions the failure of which, having regard to the criteria, would not be likely to have a significant negative effect on financial markets, on other institutions, on funding conditions or on the wider economy. If an institution's failure and subsequent winding up under normal insolvency proceedings is considered to be likely to have a significant negative effect on financial markets, on other institutions, on funding conditions or on the wider economy, full obligations should apply.

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<sup>2</sup> 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 college (OJ L 184, 8.7.2016, p. 1–71)



4. The assessment as to whether it is appropriate for simplified obligations to apply should be done regularly and at least every two years. It is important that the assessment is kept under review as the information requirements, and recovery and resolution strategy may change from time to time, for example, in light of prevailing market conditions (for instance, when market conditions are benign a small institution's failure may not be regarded as potentially systemic but under extreme market conditions it may be that the institution's failure may have systemic implications necessitating a more detailed resolution plan to be put in place should that institution encounter serious financial difficulties).
5. The criteria specified in Article 4(1) of the Directive are:
  - a. size;
  - b. interconnectedness to other institutions or to the financial system in general;
  - c. scope and the complexity of activities;
  - d. risk profile;
  - e. legal status;
  - f. nature of business;
  - g. shareholding structure;
  - h. legal form;
  - i. membership of an IPS or other cooperative mutual solidarity systems as referred to in Article 113(7) of Regulation (EU) No 575/2013; and
  - j. any exercise of investment services or activities as defined in point (2) of Article 4(1) of Directive 2014/65/EU.
6. The Directive requires the EBA to develop draft RTS under Article 4(6) to specify the above mentioned criteria, taking into account, where appropriate, experience acquired in the application of the EBA guidelines on the same criteria issued under Article 4(5) of the Directive. The Member States' experience in the application of the EBA guidelines has been shared with the EBA through uniform formats, templates and definitions as mandated under Article 4(11) of the Directive and the Commission Implementing Regulation on simplified obligations reporting.<sup>3</sup>

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<sup>3</sup> Commission Implementing Regulation (EU) 2016/962 of 16 June 2016 laying down implementing technical standards with regard to the uniform formats, templates and definitions for the identification and transmission of information by competent authorities and resolution authorities to the European Banking Authority according to Directive 2014/59/EU of the European Parliament and of the Council



## 3.2 Content

7. The draft RTS propose that authorities conduct a 2-stage eligibility assessment for determining whether an institution is eligible for simplified obligations:

- (i) As part of stage 1 credit institutions should be assessed against a number of quantitative criteria: size, interconnectedness, scope and complexity of activities, and nature of business. To assess the quantitative criteria, the draft RTS contain a number of indicators that are equally weighted (apart from the indicator of total assets). Those indicators are identical to those used in the EBA guidelines on O-SII identification<sup>4</sup> to make the assessment as easy and practicable as possible for the authorities concerned. The assessment of those indicators follows the O-SII methodology and leads to the calculation of a total quantitative score for each credit institution. If the total quantitative score of a credit institution is equal to or higher than 25 basis points, the credit institution is ineligible for simplified obligations and authorities should stop their assessment here and not move on to stage 2. For investment firms, the draft RTS only specify the indicators that should be used by the authorities to assess the criterion of size and require the authorities to set the weights assigned to such indicators and the relevant threshold;
- (ii) Those credit institutions passing stage 1 should be assessed against a number of qualitative criteria: shareholding structure, legal form, legal status, membership in an IPS or other cooperative solidarity systems, risk profile and exercise of investment services or activities. Those investment firms passing stage 1 should be assessed against the qualitative criteria of interconnectedness, scope and complexity of activities, nature of business, shareholding structure, legal form, legal status, membership in an IPS or other cooperative solidarity systems, risk profile and exercise of investment services or activities. To assess those qualitative criteria the draft RTS contain a minimum list of considerations that the authorities should take into account. Authorities are free to take into account additional considerations as they see fit.

8. Exemptions from stage 1:

- (i) The authorities may exclude from simplified obligations global systemically important institutions (G-SIIs), other systemically important institutions (O-SIIs) and other SREP Category 1 institutions<sup>5</sup> as the SREP assessment criteria overlap to a significant extent with the simplified obligations eligibility criteria;

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<sup>4</sup> EBA Guidelines on the criteria to determine the conditions of application of Article 131(3) of Directive 2013/36/EU (CRD) in relation to the assessment of other systemically important institutions (O-SIIs) (EBA/GL/2014/10).

<sup>5</sup> EBA Guidelines on common procedures and methodologies for the supervisory review and evaluation process (SREP) (EBA/GL/2014/13).





- (ii) For credit institutions, the authorities may raise or lower the threshold of 25 basis points (even to a different extent among authorities within the same Member State) provided that the new threshold is set between 0 and 105 basis points. For investment firms, authorities cannot raise or lower the threshold, given that they have discretion to set their own threshold for the total quantitative score in the first place.
  - (iii) For credit institutions whose total assets do not exceed 0.015% of the aggregated amount of total assets of all credit institutions in the Member State, authorities may move directly to the qualitative assessment under stage 2 without the need to assess the remainder of the quantitative criteria. This is to streamline the assessment for small-sized credit institutions for which indicator values often are not available in relation to most of the quantitative criteria, with the exception of the criterion of size; and
  - (iv) For promotional banks and credit institutions subject to an orderly winding-up process the authorities have to conduct the stage 1 assessment, but the thresholds for the total quantitative score are not applicable. Therefore, authorities should calculate the institution's total quantitative score but are free to decide how to assess it, namely whether the authorities can move on to the next stage of the assessment, or stop here and conclude that the institution is ineligible for simplified obligations.
9. In principle, the assessment of eligibility for simplified obligations should be made on an individual basis for each institution within scope of the BRRD. However, in order to better align the eligibility assessment with the level of recovery and resolution planning a different treatment in relation to groups is proposed. In particular, to make the assessment as practicable as possible the draft RTS suggest that for groups the assessment should be made at the level of each Member State. If there is a parent entity established in a Member State there should be one assessment at the parent level per Member State. If there is no parent undertaking in a Member State the assessment of the subsidiary of a group with a cross-border presence should be made on an individual basis. Additionally, there should be an eligibility assessment at the Union parent level. For those groups with cross-border operations to be eligible for simplified obligations all assessments in each relevant Member State and at the Union parent level should conclude so. In other words, the group plans can only be simplified, if all parts of the group are eligible for simplified treatment. This approach accommodates the inherent complexity and interconnectedness of entities that are part of a cross-border group, while also ensuring a streamlined eligibility assessment with application of the indicators and methodology in a practicable way.
10. The assessment of the impact that the failure of the institution could have on financial markets, on other institutions or on funding conditions, taking account of the criteria in Article 4(1) of the Directive, is ultimately a matter of judgement for the authorities having regard to the qualitative criteria, provided that the institution does not meet the specified threshold for the total quantitative score when assessed against the quantitative criteria. The use of



indicators, weights and thresholds promotes a uniform approach to the assessment of institutions against the quantitative criteria while taking into account the characteristics of the institution and financial sector in the jurisdiction concerned. The qualitative criteria enable the authorities to assess the aspects of the institution that could not be judged on a common basis for all of the institutions nor quantified through specific indicators and thresholds. This approach ensures an appropriate balance between convergence of practices and flexibility for the authorities to apply their judgement depending on the institution-specific circumstances.

## 4. Draft regulatory technical standards

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In between the text of the draft RTS that follows, further explanations on specific aspects of the proposed text are occasionally provided, which set out specific questions for the consultation process. Where this is the case, this explanatory text appears in a framed text box.

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**COMMISSION DELEGATED REGULATION (EU) No .../..****of XXX****[...]****supplementing Directive 2014/59/EU of the European Parliament and of the Council with regard to regulatory technical standards specifying the criteria for assessing the impact of an institution's failure on financial markets, on other institutions and on funding conditions**

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Directive 2014/59/EU of the European Parliament and of the Council of 15 May 2014 on 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<sup>6</sup>, and in particular Article 4 (6) thereof,

Whereas:

(1) In order to determine whether to grant simplified obligations to an institution in their jurisdiction Article 4(1) of Directive 2014/59/EU requires competent and resolution authorities to assess the impact that the failure of an institution could have due to the nature of its business, its shareholding structure, its legal form, its risk profile, size and legal status, its interconnectedness to other institutions or to the financial system in general, the scope and the complexity of its activities, its membership of an IPS or other cooperative mutual solidarity systems as referred to in Article 113(7) of Regulation (EU) No 575/2013 of the European Parliament and of the Council<sup>7</sup> and any exercise of investment services or activities as defined in point (2) of Article 4(1) of Directive 2014/65/EU<sup>8</sup>.

(2) The assessment referred to in this Regulation should be distinct from and should not predetermine any other assessment to be made by resolution authorities including, in particular, any assessment of the resolvability of an institution and group, and as to

<sup>6</sup> OJ L 193, 12.6.2014, p. 190.

<sup>7</sup> Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms and amending Regulation (EU) No 648/2012 (OJ L 176 27.6.2013, p. 1).

<sup>8</sup> Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Directive 2002/92/EC and Directive 2011/61/EU ((OJ L 173 12.6.2014, p. 349).



whether the conditions for resolution referred to in Directive 2014/59/EU and Regulation (EU) No 806/2014 of the European Parliament and of the Council<sup>9</sup>, are satisfied.

(3) The specification of the criteria referred to in Article 4(1) of Directive 2014/59/EU should be practical, efficient and effective. Institutions should therefore be assessed, first on the basis of quantitative criteria, and subsequently on the basis of qualitative criteria. In principle, the assessment should be based on qualitative criteria where the assessment on the basis of quantitative criteria does not lead to the conclusion that, in light of the impact that the institution's failure could have, full obligations are required.

(4) To ensure a high degree of convergent and effective application, the quantitative criteria should be measured and assessed against a common threshold in the form of a total quantitative score. That score should be calculated in accordance with a set of indicators, with the corresponding values from the supervisory reporting framework applicable in accordance with Commission Implementing Regulation (EU) No 680/2014<sup>10</sup>. In particular, competent and resolution authorities should calculate the aggregate amount of the indicator values summed across all institutions in the Member State concerned. To calculate that aggregate amount, competent and resolution authorities should include all of the institutions (in particular for credit institutions the denominator should include also entities which may be excluded from a detailed quantitative assessment due to their small size or classification as G-SIIs, O-SIIs, or SREP Category 1 institutions). Competent and resolution authorities should also include data from branches established in their jurisdiction, including Union branches established therein, where those data are available.

(5) For credit institutions, the threshold for a total quantitative score should in principle be established at the level of 25 basis points, to ensure a desirable balance in terms of the expected ratio of institutions ineligible for simplified obligations within Member States and the distribution of ineligible institutions across Member States. However, competent and resolution authorities should be able to raise or lower the threshold of 25 basis points and set it within the range of 0 to 105 basis points, depending on the specificities of the Member State's banking sector. For instance, a highly concentrated banking sector may justify a higher threshold, whereas a large number of small institutions along with a small number of large institutions may lead to a lower threshold.

(6) Competent or resolution authorities should use appropriate proxies based on the national Generally Accepted Accounting Principles (GAAP) where they do not receive the indicator values. Competent or resolution authorities should be able to assign value '0' to the relevant indicators where identification of proxies would be seen as excessively cumbersome, but only for certain institutions not reporting Template 20 on the basis of Article 5(a)(4) of Implementing Regulation (EU) No 680/2014, due to them not exceeding the threshold referred to in that Article.

(7) To ensure that the approach taken in this Regulation fully complies with the principle of proportionality and to eliminate any disproportionate burden, it should be possible that

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<sup>9</sup> Regulation (EU) No 806/2014 of the European Parliament and of the Council of 15 July 2014 establishing uniform rules and a uniform procedure for the resolution of credit institutions and certain investment firms in the framework of a Single Resolution Mechanism and a Single Resolution Fund and amending Regulation (EU) No 1093/2010 (OJ L 225, 30.7.2014, p. 1).

<sup>10</sup> Commission Implementing Regulation (EU) No 680/2014 of 16 April 2014 laying down implementing technical standards with regard to supervisory reporting of institutions according to Regulation (EU) No 575/2013 of the European Parliament and of the Council (OJ L 191 28.6.2014, p. 1).



small credit institutions are able to be quantitatively assessed on the basis of their size only. Competent and resolution authorities should therefore be able, without applying the total quantitative score, to conclude that the failure of a small credit institution would not be likely to have a significant negative effect on financial markets, other institutions or funding conditions, provided that their qualitative assessment supports that conclusion. For these small credit institutions the assessment of the qualitative criteria should also be conducted in a proportionate manner.

(8) To achieve effectiveness and efficiency of the assessment of the impact of institutions' failure on financial markets, other institutions or funding conditions, the specification of quantitative and qualitative criteria should build upon terms and categories already laid down in Directive 2013/36/EU of the European Parliament and of the Council<sup>11</sup>.

(9) Pursuant to Article 131(2) of Directive 2013/36/EU, global systemically important institutions (G-SIIs) are identified as such on the basis of, *inter alia*, their size, interconnectedness with the financial system, complexity and cross-border activity. Since those criteria overlap to a large extent with the criteria of Article 4(1) of Directive 2014/59/EU competent and resolution authorities should be able to decide that G-SIIs' failure would be likely to have a significant negative effect on financial markets, other institutions or funding conditions, without having to conduct a quantitative assessment.

(10) Pursuant to Article 131(3) of Directive 2013/36/EU, other systemically important institutions (O-SIIs) are identified as such on the basis of, *inter alia*, their size, their importance for the economy of the Union or of the relevant Member State, the significance of their cross-border activities and their interconnectedness with the financial system. Since those criteria are very similar to the criteria of Article 4(1) of Directive 2014/59/EU, competent and resolution authorities should be able to decide that O-SIIs' failure would be likely to have a significant negative effect on financial markets, other institutions or funding conditions, without having to conduct a quantitative assessment.

(11) Article 107(3) of Directive 2013/36/EU requires the European Banking Authority (EBA) to issue guidelines on common procedures and methodologies for the supervisory review and evaluation process (SREP) in accordance with Article 16 of Regulation (EU) No 1093/2010 of the European Parliament and of the Council<sup>12</sup>. Competent authorities and financial institutions to which those guidelines are addressed are required to make every effort to comply with them. The categorisation under the EBA SREP guidelines by competent authorities should therefore be taken into account in the context of the assessment referred to in Article 4(1) of Directive 2014/59/EU. Competent authorities classify institutions into four categories. The first category (SREP Category 1) is comprised of G-SIIs and O-SIIs and, where appropriate, other institutions categorised by a competent authority on the basis of their size, internal organisation, nature, scope and complexity of their activities. Accordingly, where the competent authority has determined an institution to fall under SREP Category 1. Competent and resolution authorities should therefore be able to decide that the failure of SREP Category 1 institutions would be likely

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<sup>11</sup> OJ L 176, 27.6.2013, p. 338.

<sup>12</sup> 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).



to have a significant negative effect on financial markets, other institutions or funding conditions, without having to conduct a quantitative assessment.

(12) Where necessary, competent and resolution authorities should take into account certain qualitative considerations in addition to the ones provided in this Regulation to cater for specificities of their national financial sectors.

(13) In light of the diverse range of investment firms covered by Directive 2014/59/EU and the need not to pre-empt the ongoing work at the Union level on the review of the prudential requirements of those firms, this Regulation should only specify the indicators that should be taken into account by competent and resolution authorities to assess the criterion of size and should only require those authorities to set the weights assigned to those indicators and determine the relevant thresholds.

(14) It is possible that competent and resolution authorities from the same Member State may take separate decisions as regards the level of the threshold for the total quantitative score and reach different conclusions, depending on different qualitative assessments, on whether the impact of an institution's failure would be likely to have a significant negative effect on financial markets, other institutions or funding conditions. Competent and resolution authorities should therefore regularly evaluate their different approaches.

(15) An institution belonging to a group subject to consolidated supervision pursuant to Articles 111 and 112 of Directive 2013/36/EU ("cross-border") is highly interconnected and its activities are much more complex in comparison with a stand-alone institution. The impact of a failure of an institution belonging to a cross-border group is thus likely to be more significant. Competent and resolution authorities should therefore establish that the failure of an institution belonging to a cross-border group would be likely to have a significant negative effect on financial markets, other institutions or funding conditions, where any of the assessments at the level of each Member State where the group has presence concludes so. To achieve this, competent and resolution authorities should coordinate their assessments and exchange all information necessary, within the structure of the banking union and within the framework of supervisory and resolution colleges.

(16) Competent and resolution authorities should be able to decide that the failure of certain institutions would not be likely to have a significant negative impact as referred to in Article 4(1) of Directive 2014/59/EU, even when their total quantitative score reaches the predetermined threshold. That different treatment of those institutions is justified by their exceptional characteristics. The first group consists of promotional banks whose purpose it is to advance the public policy objectives of a Member State's central or regional government or local authority through the provision of promotional loans on a non-competitive, not-for-profit basis. The loans that those institutions grant are directly or indirectly guaranteed by the central or regional government or the local authority. Promotional banks may thus be regarded as institutions the failure of which would not be likely to have a significant negative effect on financial markets, other institutions or funding conditions, provided that this is in line with their qualitative assessment. The second group consists of credit institutions that have been subject to an orderly winding-up process. Since an orderly winding-up process in general prevents new business, credit institutions that have been subject such a process may also be regarded as institutions the failure of which would not be likely to have a significant negative effect on financial markets, other institutions or funding conditions, provided that this is in line with their qualitative assessment. Taking into account the different purposes of recovery and





resolution planning, competent and resolution authorities of the same Member State may reach different conclusions with regard to the application of these exemptions.

(17) This Regulation is based on the draft regulatory technical standards submitted by the EBA to the Commission.

(18) EBA has conducted open public consultations on the draft regulatory technical standards on which this Regulation is based, analysed the potential related costs and benefits and requested the opinion of the Banking Stakeholder Group established in accordance with Article 37 of Regulation (EU) No 1093/2010<sup>13</sup>.

HAS ADOPTED THIS REGULATION:

*Article 1- Quantitative assessment for credit institutions*

1. The impact of a failure of a credit institution on financial markets or other institutions or funding conditions shall be assessed on a regular basis and at least every two years and on the basis of a total quantitative score calculated in accordance with Annex I.
2. A credit institution with a total quantitative score equal to or higher than 25 basis points shall be regarded as an institution the failure of which would be likely to have a significant negative effect on financial markets, other institutions or funding conditions.
3. Competent and resolution authorities may raise or lower the threshold referred to in paragraph 2 within the range of 0 to 105 basis points. Competent and resolution authorities shall keep the amended threshold under regular review.
4. Where the indicator values of Annex I are not available, the assessment referred to in paragraph 1 shall be made on the basis of proxies correlated to the greatest extent possible with the indicators' specification in Annex III.
5. Where a credit institution does not exceed the threshold specified in Article 5(a)(4) of Commission Implementing Regulation (EU) No 680/2014 and does not submit Template 20 of FINREP, competent and resolution authorities may assign zero to the value of the relevant indicators specified in Annex III.
6. Where the total assets of a credit institution do not exceed 0.015% of the total assets of all credit institutions authorised and, where relevant data are available, branches established in the Member State including Union branches, competent and resolution authorities may, without applying paragraphs 1 to 5, establish that the failure of that institution would not be likely to have a significant negative effect on financial markets, other institutions or funding conditions, unless this would not be justified on the basis of Article 2.
7. Where a credit institution has been identified as a G-SII or O-SII in accordance with Article 131(1) of Directive 2013/36/EU or classified as Category 1 on the basis of guidelines on common procedures and methodologies for the supervisory review and

<sup>13</sup> 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).



evaluation process (SREP) issued in accordance with Article 107(3) of that Directive, competent and resolution authorities may, without applying paragraphs 1 to 5, establish that the failure of that institution would be likely to have a significant negative effect on financial markets, other institutions or funding conditions.

Question 1

Do you agree with the list of quantitative indicators for credit institutions provided in Annex I?

Question 2

Do you agree with the calibration of the total quantitative threshold for credit institutions? Do you expect any unintended consequences arising from applying that threshold? If yes, please provide details on these consequences.

*Article 2 - Qualitative assessment for credit institutions*

1. Where a credit institution is not regarded as an institution the failure of which would be likely to have a significant negative effect on financial markets, other institutions or funding conditions pursuant to Article 1, the impact of its failure on financial markets, other institutions or funding conditions shall be assessed on a regular basis and at least every two years and having regard to at least all of the following qualitative considerations:
  - a) the extent to which the credit institution performs critical functions in one or more Member States;
  - b) whether the credit institution's covered deposits would not be fully protected taking into account the available financial means of the relevant deposit guarantee scheme and the deposit guarantee scheme's capacity to raise extraordinary ex-post contributions, as referred to in Article 10 of Directive 2014/49/EU of the European Parliament and of the Council<sup>14</sup>;
  - c) whether the credit institution's shareholding structure is highly concentrated or highly dispersed, or whether that structure is sufficiently transparent insofar as it could negatively impact the availability or timely implementation of the institution's recovery or resolution actions;
  - d) whether the credit institution is a member of an IPS, as referred to in Article 113(7) of Regulation (EU) No 575/2013, and is a central body providing critical functions to other participants including clearing, treasury or other services to other IPS members;
  - e) whether the credit institution is a member of a mutual solidarity system, as referred to in Article 10 of Regulation (EU) No 575/2013, and the mutualisation of losses among members would constitute a substantive impediment to normal insolvency proceedings;

<sup>14</sup> OJ L 193, 12.6.2014, p. 190.





- f) the different objectives pursued by the recovery and the resolution planning.
2. The assessment referred to in paragraph 1 may be performed for a category of credit institutions where the relevant competent or resolution authority determines that two or more credit institutions share similar characteristics in terms of the criteria set out in paragraph 1.

Question 3

Do you agree with the list of qualitative considerations for credit institutions?

*Article 3 – Quantitative assessment for investment firms*

1. The impact of a failure of an investment firm on financial markets, other institutions or funding conditions shall be assessed on a regular basis and at least every two years and on the basis of the total quantitative score calculated on the basis of the indicators referred to in Annex II and of weights assigned to those indicators by competent and resolution authorities.
2. The corresponding values of the indicators shall be determined on the basis of the indicators' specification in Annex III. Where the indicator values of Annex II are not available, the assessment referred to in paragraph 1 shall be made on the basis of proxies correlated to the greatest extent possible with the indicators' specification in Annex III. Where proxies are not available, competent and resolution authorities may replace the indicators referred to in Annex II with other indicators.
3. The threshold for the total quantitative score shall be set by competent and resolution authorities.
4. An investment firm with a total quantitative score equal to or higher than the threshold referred to in paragraph 3 shall be regarded as an institution the failure of which would be likely to have a significant negative effect on financial markets, other institutions or funding conditions.
5. Where an investment firm has been identified as a G-SII or O-SII in accordance with Article 131(1) of Directive 2013/36/EU or has been classified as Category 1 on the basis of guidelines on common procedures and methodologies for the supervisory review and evaluation process (SREP) issued in accordance with Article 107(3) of that Directive, competent and resolution authorities may, without applying paragraphs 1 to 4, establish that the failure of that institution would be likely to have a significant negative effect on financial markets, other institutions or funding conditions.

Question 4

Do you agree with the list of quantitative indicators for investment firms provided in Annex II?



*Article 4 - Qualitative assessment for investment firms*

1. Where an investment firm is not regarded as an institution the failure of which would be likely to have a significant negative effect on financial markets, other institutions and funding conditions pursuant to Article 3, the impact of its failure on financial markets, other institutions or funding conditions shall be assessed on a regular basis and at least every two years and having regard to at least all of the following qualitative considerations:
  - a) the extent to which the investment firm performs critical functions in one or more Member States;
  - b) whether the investment firm's shareholding structure is highly concentrated or highly dispersed, or whether that structure is sufficiently transparent insofar as it could negatively impact the availability or timely implementation of the institution's recovery or resolution actions;
  - c) whether the investment firm is a member of an IPS, as referred to in Article 113(7) of Regulation (EU) No 575/2013, and is a central body providing critical functions to other participants including clearing, treasury or other services to other IPS members;
  - d) whether the investment firm is a member of a mutual solidarity system, as referred to in Article 10 of Regulation (EU) No 575/2013, and the mutualisation of losses among members would constitute a substantive impediment to normal insolvency proceedings;
  - e) whether the clients of the investment firm are retail or institutional;
  - f) whether money and financial instruments held by the investment firm on its clients' behalf are covered by an investor compensation scheme as referred to in Directive 97/9/EC<sup>15</sup>;
  - g) whether the investment firm's business model is complex, including the scale of investment activities;
  - h) the different objectives pursued by the recovery and the resolution planning.

Question 5

Do you agree with the list of qualitative considerations for investment firms?

*Article 5 - Institutions belonging to groups*

1. For an institution that is part of a group, the assessments referred to in Articles 1 to 4 shall be made at the level of the parent undertaking in the Member State where the institution has been authorised.
2. By way of derogation from paragraph 1, for an institution that is part of a group subject to consolidated supervision pursuant to Articles 111 and 112 of Directive

<sup>15</sup> Directive 97/9/EC of the European Parliament and of the Council of 3 March 1997 on investor-compensation schemes (OJ L 84, 26.3.1997 p. 2).



2013/36/EU<sup>16</sup>, the assessments referred to in Articles 1 to 4 shall be made at the following levels:

- a) the level of the Union parent undertaking;
  - b) the level of each parent undertaking or, where there is no parent undertaking in a Member State, the level of each stand-alone subsidiary of the group.
3. Institutions that are part of a group subject to consolidated supervision pursuant to Articles 111 and 112 of Directive 2013/36/EU shall be regarded as institutions the failure of which would be likely to have a significant negative effect on financial markets, other institutions or funding conditions, where any of the following apply at any of the levels referred to in points (a) and (b) of paragraph 2:
- a) the institution has a total quantitative score which is equal to or exceeds the threshold set by competent and resolution authorities pursuant to Article 1(3) or Article 3(3);
  - b) the criteria in Article 2(1) or Article 4(1) are satisfied.
4. Paragraphs 2 and 3 shall not apply to institutions that are subject to a recovery plan as referred to in Article 8(2)(b) of Directive 2014/59/EU.
5. Competent and resolution authorities shall coordinate their assessments referred to in this Article and exchange all necessary information, within the framework of supervisory and resolution colleges.

#### *Article 6 – Assessment of promotional banks*

Promotional banks in the meaning of Article 3(27) of Commission Delegated Regulation (EU) No 2015/63<sup>17</sup> may, without the application of Articles 1(2) and 5(3), be regarded as not likely to have a significant negative effect on financial markets, other institutions or funding conditions, where the criteria in Article 2(1) are not satisfied at any of the following levels:

- (a) the level of the Union parent undertaking;
- (b) the level of each parent undertaking or, where there is no parent undertaking in a Member State, the level of each stand-alone subsidiary of the group.

#### *Article 7 – Assessment of credit institutions subject to an orderly winding-up process*

Credit institutions that are subject to an orderly winding-up process may, without the application of Articles 1(2) and 5(3), be regarded as not likely to have a significant negative effect on financial markets, other institutions or funding conditions where the criteria in Article 2(1) are not satisfied at any of the following levels:

- (a) the level of the Union parent undertaking;

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<sup>16</sup> OJ L 176, 27.6.2013, p. 338.

<sup>17</sup> Commission Delegated Regulation (EU) 2015/63 of 21 October 2014 supplementing Directive 2014/59/EU of the European Parliament and of the Council with regard to ex ante contributions to resolution financing arrangements (OJ L 11, 17.1.2015, p. 44).



- (b) the level of each parent undertaking or, where there is no parent undertaking in a Member State, the level of each stand-alone subsidiary of the group.

*Article 8 - Entry into force*

This Regulation shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels,

*For the Commission  
The President*

*[For the Commission  
On behalf of the President*

*[Position]*

## ANNEX I- Calculation of total quantitative score for credit institutions

**Table 1: Indicators and weights for credit institutions**

Criteria	Indicators for credit institutions	Weight
Size	Total assets	25%
Interconnectedness	Intra-financial system liabilities	8.33%
	Intra-financial system assets	8.33%
	Debt securities outstanding	8.33%
Scope and complexity of activities	Value of OTC derivatives (notional)	8.33%
	Cross-jurisdictional liabilities	8.33%
	Cross-jurisdictional claims	8.33%
Nature of business	Private sector deposits from depositors in the EU	8.33%
	Private sector loans to recipients in the EU	8.33%
	Value of domestic payments	8.33%

1. For each indicator listed in Table 1, the corresponding value shall be determined using the specifications provided in Annex III.
2. The indicator value of each credit institution shall be divided by the aggregate amount of the respective indicator values summed across all credit institutions authorised and, where the relevant data are available, branches established in the Member State concerned including Union branches established in that Member State.
3. The resulting ratios shall be multiplied by 10 000 to express the indicator scores in terms of basis points.
4. Each of the indicator scores (expressed in basis points) shall be multiplied by the weight assigned to each indicator as set out in Table 1.
5. The total quantitative score shall be a sum of all of the weighted indicator scores.

**ANNEX II**  
**Indicators for investment firms**

Criterion	Indicators for investment firms
Size	Total assets
	Total liabilities
	Total fees and commission income
	Assets under management

### ANNEX III - Specification of indicators

Indicator	Scope	Specifications
Total assets	worldwide	FINREP (IFRS or GAAP) → F 01.01, row 380 column 010
Total liabilities	worldwide	FINREP (IFRS or GAAP) → F 01.02, row 300 column 010
Total fees and commission income	worldwide	FINREP (IFRS or GAAP) → F 02.00, row 200 column 010
Assets under management	worldwide	FINREP (IFRS or GAAP) → F 22.02, row 010 column 010
Intra-financial system liabilities	worldwide	FINREP (IFRS or GAAP) → F 20.06, rows 020+030+050+060+100+110, column 010, All countries (z-axis)
Intra-financial system assets	worldwide	FINREP (IFRS or GAAP) → F 20.04, rows 020+030+050+060+110+120+170+180, column 010, All countries (z-axis)
Debt securities outstanding	worldwide	FINREP (IFRS or GAAP) → F 01.02, rows 050+090+130, column 010
Value of OTC derivatives (notional)	worldwide	FINREP (IFRS) → F 10.00, rows 300+310+320, column 030 + F 11.00, rows 510+520+530, column 030 FINREP (GAAP) → F 10.00, rows 300+310+320, column 030 + F 11.00, rows 510+520+530, column 030
Cross-jurisdictional liabilities	worldwide	FINREP (IFRS or GAAP) → F 20.06, rows 010+040+070, column 010, All countries except home country (z-axis) Note: The calculated value should exclude i) intra-office liabilities and ii) liabilities of foreign branches and subsidiaries vis-à-vis counterparties in the same host country
Cross-jurisdictional claims	worldwide	FINREP (IFRS or GAAP) → F 20.04, rows 010+040+080+140, column 010, All countries except home country (z-axis) Note: The calculated value should exclude i) intra-office assets and ii) assets of foreign branches and subsidiaries vis-à-vis counterparties in the same host country
Private sector deposits from depositors in the EU	EU only	FINREP (IFRS or GAAP) → F 20.06, rows 120+130, column 010, EU countries (z-axis)
Private sector loans to recipients in the EU	EU only	FINREP (IFRS or GAAP) → F 20.04, rows 190+220, column 010, EU countries (z-axis)
Value of domestic payment transactions	worldwide	Payments made in the reporting year (excluding intragroup payments): This indicator is calculated as the value of a bank's payments sent through all of the main payment systems of which it is a member. Report the total gross value of all cash payments sent by the relevant entity via large value payment systems and the gross value of all cash payments sent through an agent bank (e.g. using a correspondent or nostro account) over the reporting year in each indicated currency. All payments sent via an agent bank should be reported, regardless of how the agent bank actually settles the transaction. Do not include intragroup transactions (i.e. transactions processed within or between entities within the group of the relevant entity). If precise totals are unavailable, known overestimates may be reported. Payments should be reported regardless of the purpose, location or settlement method. This includes, but is not limited to, cash payments associated with derivatives, securities financing transactions and foreign exchange transactions. Do not include the value of any non-cash items settled in connection with these transactions. Include cash payments made on behalf of the reporting entity as well as those made on behalf of customers (including financial institutions and other commercial customers). Do not include payments made through retail payment systems.



		<p>Only include outgoing payments (i.e. exclude payments received). Include the amount of payments made via CLS. Other than CLS payments, do not net any outgoing wholesale payment values, even if the transaction was settled on a net basis (i.e. all wholesale payments made via large-value payment systems or through an agent must be reported on a gross basis). Retail payments sent via large-value payment systems or through an agent may be reported on a net basis. Please report values in Euro, using the official rate specified in <a href="http://ec.europa.eu/budget/contracts_grants/info_contracts/inforeuro/inforeuro_en.cfm">http://ec.europa.eu/budget/contracts_grants/info_contracts/inforeuro/inforeuro_en.cfm</a> (for monthly rates) or in <a href="http://www.ecb.europa.eu/stats/exchange/eurofxref/html/index.en.html">http://www.ecb.europa.eu/stats/exchange/eurofxref/html/index.en.html</a> (for daily rates).</p>
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## 5. Accompanying documents

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### 5.1 Draft cost-benefit analysis / impact assessment

Article 10(1) of the EBA Regulation provides that when any regulatory technical standards (RTS) developed by the EBA are submitted to the Commission for adoption, they should be accompanied by an analysis of ‘the potential related costs and benefits’. This analysis should provide an overview of the findings regarding the problem to be dealt with, the solutions proposed and the potential impact of these options.’

This section of the Consultation Paper presents the draft Impact Assessment (IA) with cost-benefit analysis of the provisions included in the draft RTS described in this Paper.

#### A. Problem identification and baseline scenario

These draft RTS aim to address potential shortcomings in the effective application by competent and resolution authorities of the criteria for assessing whether institutions may be subject to simplified obligations in the context of recovery and resolution planning. In particular, their objective is to remedy the problem of insufficient level of harmonisation at the EU level in applying the criteria for assessing the institutions’ eligibility for simplified obligations. The eligibility criteria specified in Article 4(1) of the Directive are stated in relatively broad terms and are therefore open to interpretation. The existing EBA Guidelines (GL) on simplified obligations further specified these criteria. However, based on the experience gained in the first two years of applying these GL by the competent and resolution authorities, significant variations exist in terms of the approach followed in conducting the eligibility assessment.

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

- a) asymmetric information and approaches between authorities in different Member States when there is a need for cooperation in cross-border cases;
- b) an uneven playing field for institutions in the EU, that is different treatment of institutions with the same characteristics or of institutions belonging to the same cross-border groups;
- c) regulatory arbitrage in which institutions may cease their operations in Member States where the regulatory framework is stricter and/or less predictable, and shift to Member States with more favourable regulatory frameworks.



In accordance with the Commission Implementing Regulation (EU) 2016/962 on simplified obligations and waivers<sup>18</sup> national authorities (i.e. competent authorities for recovery plans and resolution authorities for resolution plans) have reported to EBA on the application of simplified obligations (and waivers) to institutions under their jurisdiction for the period commencing in January 2015 and ending in April 2016. In particular, competent and resolution authorities from 30 EEA jurisdictions reported on institutions assessed as eligible for simplifications and provided information on their number and relative size, the applied eligibility assessment criteria and indicators (as specified in the relevant EBA GL on simplified obligations) and the scope of simplifications (i.e. the first submission date of plans, frequency of plans' revisions and contents of plans). Based on the data collected in June 2016, approximately half of competent authorities applied simplified obligations or waivers to institutions in their jurisdictions with regards to recovery planning. On the other hand, more than one third of resolution authorities decided to apply simplified obligations or waivers in relation to resolution planning. The treatment of credit institutions and investment firms varied significantly across jurisdictions in terms of the scope of applications. Figure 1 below presents comparative statistics on the application of simplified obligations for credit institutions among Member States.<sup>19</sup>

**Figure 1**

	<b>Recovery planning</b>	<b>Resolution planning</b>
Credit institutions (CIs)	<b>13%-94%</b> [of all CIs] <b>1%-25%</b> [of all assets of CIs]	<b>3%-98%</b> [of all CIs] <b>0.5%-32%</b> [of all assets of CIs]

This heterogeneity reflects *inter alia* the high degree of flexibility the authorities have in interpreting and implementing the existing EBA GL on simplified obligations. It also presents the wide diversity amongst authorities regarding the methodologies, indicators and respective weights used for the assessment of institutions' eligibility for simplified obligations in recovery and resolution planning.

## B. Policy objectives

The objective of these draft RTS is to promote convergence of supervisory and resolution practices regarding the interpretation of the criteria specified in Article 4(1) of the Directive to be taken into account in assessing whether an institution is eligible for simplified obligations for the purposes of recovery and resolution planning. A central element in establishing such a harmonised framework is to specify a common approach or methodology which can be used by

<sup>18</sup> Commission Implementing Regulation (EU) 2016/962 of 16 June 2016 laying down implementing technical standards with regard to the uniform formats, templates and definitions for the identification and transmission of information by competent authorities and resolution authorities to the European Banking Authority according to Directive 2014/59/EU of the European Parliament and of the Council (OJ L 160, 17.6.2016, p. 35–49).

<sup>19</sup> Due to the fact that not all investment firms are within scope of Directive 2014/59/EU and the lack of comparability of data received from the authorities (some authorities reported in relation to all investment firms within their jurisdiction and some in relation to those within scope), similar statistics for investment firms are not provided in this Impact Assessment.



the competent and resolution authorities in the Member States when assessing institutions. The common approach is expected to achieve a consistent application of the proportionality principle<sup>20</sup> without *per se* affecting the effectiveness of the institutions' recovery actions and of the resolution authorities' resolution actions, whilst being consistent with related GL and standards, such as the EBA GL on criteria for the assessment of O-SIIs in the EU. It is also expected to facilitate cooperation among authorities, in particular as regards institutions with cross-border presence.

### C. Options considered and preferred option

In developing these draft RTS, the following sets of options have been considered:

#### C.1 Options on how to specify the criteria for determining institutions' eligibility for simplified obligations

Option 1.1: Specify the eligibility criteria only in a qualitative way (without providing any quantitative indicators).

Option 1.2: Where possible, specify the eligibility criteria through an exhaustive list of quantitative indicators, as well as outline a methodology for calculating a total quantitative score (with weights assigned to each indicator) and threshold values specified for the total quantitative score.

Option 1.3: Where possible, specify the eligibility criteria through a set of quantitative indicators, however without specifying any calculation methodology or thresholds.

The potential benefits of Option 1.1 include retaining authorities' discretion with regards to simplified obligations eligibility assessment and avoiding the need to develop and test new assessment approaches. Harmonisation is achieved to a limited extent through the specification of common factors and considerations expressed in a qualitative way. However, under Option 1.1 a lack of consistency across jurisdictions may develop. Competent and resolution authorities have a wide discretion for assessing institutions' eligibility and less specific guidance provided on how to develop their assessment methodologies. This discretion may also create uncertainty for institutions and market players. Equally, wide variations between MSs may make cross-border cooperation less efficient and effective.

Through Option 1.2 full convergence is achieved across jurisdictions. Clarity and transparency are provided to market participants as well as institutions regarding their eligibility for simplified obligations. Moreover, Option 1.2 allows the indicators and weights to be aligned with other EBA regulatory products and in particular ensures consistency with the assessment of O-SIIs. On the downside, authorities' discretion is mostly removed and authorities may be forced into the decision even in cases where they do not necessarily agree with the outcome, having regard to institution-specific considerations. An exhaustive list of indicators is not flexible and from a

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<sup>20</sup> EC: Communication on the EU regulatory framework for financial services – call for evidence (2016).



regulatory point of view it is hard to adjust the list to accommodate new challenges that may occur in the future.

Option 1.3 ensures a better degree of harmonisation than Option 1.1 and provides more guidance to the authorities on developing their approaches for eligibility assessment. This option also allows authorities to incorporate more discretionary judgement into the assessment process. Option 1.3 has been largely applied in the existing EBA GL on simplified obligations where a suite of quantitative indicators was provided without specifying any weights or thresholds for them. As demonstrated by the experience gained in applying these GL by national authorities, the Option 1.3 approach did not ensure a sufficiently high level of convergence across Member States.

### Preferred option

It is reasonable to conclude that Option 1.2 is the preferred option for credit institutions, in light of the existing divergences in national practices (as evidenced by the EBA data collection under the Commission Implementing Regulation on simplified obligations reporting) and the nature of the draft RTS in that they should promote to the extent possible convergence in national approaches. The identified drawbacks of Option 1.2 have been addressed in the draft RTS through the authorities' discretion to deviate from the threshold of 25 basis points applicable in relation to the total quantitative score within a specified range (between 0 and 105 basis points). Moreover, in order to ensure necessary discretion, the draft RTS allow the authorities to exclude some specific types of institution from the application of the threshold of 25 basis points provided they meet a number of specified conditions. The draft RTS also complement the quantitative assessment of the indicators with a set of non-exhaustive qualitative considerations.

For investment firms Option 1.3 is a preferred one in light of the diverse range of investment services offered by such firms and the need not to pre-empt the ongoing work at the Union level on the review of the prudential requirements of those firms. Thus, the optimal solution for investment firms would be achieved if the draft RTS only specify the indicators that should be taken into account by competent and resolution authorities in order to assess the criterion of size, and require those authorities to set the weights assigned to such indicators and determine the relevant threshold.

### C.2 Options in relation to cut-off thresholds for a total quantitative score

Between December 2016 and January 2017 the EBA conducted a data collection exercise for credit institutions across Member States in order to calibrate a cut-off threshold for the total quantitative score (and its potential ranges) in the context of the quantitative assessment. This data collection also informed the calibration of the threshold ('Z') in relation to total assets for credit institutions that will be excluded from the quantitative assessment based on the size indicator. The EBA received data for 3874 credit institutions from 22 countries. There has been no data collection exercise conducted for investment firms because Option 1.3 has been selected as a preferred one for these entities.



In order to calibrate the threshold for a total quantitative score for credit institutions, the EBA carried out a simulation exercise where different cut-off scores were tested ranging from 0 basis points to 200 basis points. Based on a cluster analysis coupled with a manual evaluation of the results, cut-off scores between 0 and 105 basis points would lead to desirable outcomes in terms of the expected ratio of institutions ineligible for simplified obligations within Member States (in terms of their aggregated number and a cumulative relative value of total assets of such credit institutions) and the distribution of ineligible institutions across Member States. Moreover, these cut-off scores met the authorities' expectations based on their expert judgment as to which institutions in their jurisdictions should not be granted simplified obligations.

On the back of the simulation exercise, the following options for setting the cut-off threshold for the total quantitative score were considered:

Option 2.1: A fixed upper cut-off threshold of 25 basis points.

Option 2.2: A fixed upper cut-off threshold of 25 basis points coupled with a range between 0 and 105 basis points, within which competent and resolution authorities could determine the cut-off threshold appropriate to their jurisdictions.

Option 2.1 would result in the highest level of harmonisation and clearly identify a group of institutions that should not be granted simplified obligations due to a potentially significant negative impact of their failure. Option 2.2 could avoid imbalances between different financial sectors with different structures which could result in disproportionately high scores for medium-sized institutions that in reality would not be as important for the domestic financial system as their score would indicate. Moreover, Option 2.2 would allow for applying different thresholds by competent and resolution authorities, if they are justifiable due to differing purposes of recovery and resolution planning.

#### Preferred option

In order to provide room for adjustments in line with national characteristics of the financial sector, the draft RTS provide an upper cut-off threshold of 25 basis points, which can optionally be increased up to 105 basis points or decreased as low as 0 basis points.

In terms of the possible costs, Option 2.2 may involve slightly higher administrative costs in that authorities, having regard to the specificities of their national financial sector, may carry out an additional assessment to determine whether to set a different threshold within the specified range, but this incremental cost is expected to be outweighed by the benefits of ensuring that the distribution of institutions that are eligible for simplified obligations reflects the circumstances specific to each Member State's financial sector.

### C.3. Exclusion of the smallest credit institutions from part of the quantitative assessment

The data collection exercise on credit institutions showed that in many Member States there is a large number of small credit institutions the failure of which would be unlikely to have a



significant negative effect on financial markets, on other institutions or on funding conditions. In that respect, the following options were explored:

Option 3.1: All institutions, irrespective of their balance sheet size, have to undergo the full quantitative assessment.

Option 3.2: Authorities have the option to only assess the relative balance sheet size of the institution and exclude it from the remainder of the quantitative assessment, if that size does not exceed 0.01% of the total assets of all institutions established in the respective Member State.

Option 3.3: Authorities have the option to only assess the relative balance sheet size of the institution and exclude it from the remainder of the quantitative assessment, if that size does not exceed 0.015% of the total assets of all institutions established in the respective Member State.

Option 3.1 ensures a comprehensive assessment based on the complete picture of the Member State's banking sector. This option can however result in unnecessary burden for the authorities and potentially for small credit institutions, which may be required to provide additional reporting in relation to data necessary for conducting the quantitative assessment based on the full suite of indicators.

Option 3.2 would result in exempting 1549 out of 3874 credit institutions (exemption rate: 40%) from the full quantitative assessment. These small credit institutions will only be subject to part of the quantitative assessment and the qualitative assessment. This will significantly reduce the administrative costs for the authorities as well as reporting costs for the small credit institutions given that the values for the quantitative indicators for such small institutions are either very small (in relative terms approaching zero) or not reported under national or European reporting requirements.

Option 3.3 increases the number of exempted credit institutions to 1894 (exemption rate: 49%) which will undergo only a part of the quantitative assessment and the full qualitative assessment of eligibility. Compared to Option 3.2, this threshold would result in further reducing the administrative burden for authorities and reporting costs for the credit institutions. It also maintains the sample of institutions to be assessed against all of the quantitative criteria sufficiently representative at EU level.

#### Preferred option

Any discretionary exclusion from the quantitative assessment on the basis of the size of an institution's balance sheet only should be carefully calibrated with a view to providing for a proportionate approach without distorting the outcomes of the quantitative assessment. Option 3.3 strikes the right balance in that it ensures that the smallest institutions are not subject to the full quantitative assessment on the one hand, and, on the other, that institutions with a score equal or above the cut-off threshold for a total quantitative score are not excluded from the full quantitative assessment.



#### D. Cost-Benefit Analysis of the preferred approach

The cost-benefit analysis that follows focuses on the costs and benefits that arise from the implementation of the preferred approach as set out in the draft RTS, without considering the costs and benefits already assessed in the Level I text.

##### Costs

The incremental costs from implementing the draft RTS (compared to the costs arising from the existing GL on the same issue) are administrative and comprise the costs of assessing the quantitative and qualitative criteria of the eligibility assessment, as well as the costs imposed on institutions in relation to reporting the indicators values. It should be noted that specifying the criteria of eligibility for simplified obligations in alignment with the existing indicators for the assessment of O-SIIs significantly reduces these incremental costs in relation to the quantitative assessment both from the authorities' and the institutions' perspective. Although, due to the lack of data, these costs can hardly be estimated in monetary terms, the anticipated time for the authorities for initially setting up the eligibility assessment process (one-off costs) is estimated at 1 to 2 man hours per institution, i.e. one employee dealing with it for one or two hours. However, this could be decreased to 0.5 to 1 man hours in light of the use of the same indicators as in the O-SII assessment.

The draft RTS also ensures significantly reduced administrative burden for assessing particular types of institution (e.g. based on their (i) categorisation as G-SIIs, O-SIIs or other SREP Category 1 institutions, (ii) balance sheet size, and (iii) total quantitative score) by excluding them from some stages of the assessment. Moreover, the administrative cost will further decrease for future assessments (recurring costs), given the experience acquired from the first time that the methodology is applied.

##### Benefits

The benefits of the proposed approach involve a higher degree of harmonisation in the assessment of institutions' eligibility for simplified obligations, and a convergent and transparent process for granting simplified obligations. This will enhance the recovery and resolution planning process, and provide legal certainty to institutions and investors. Institutions, in particular cross-border groups, will benefit from a higher degree of transparency and a level playing field among Member States. In addition, the proposed alignment with the O-SIIs assessment strengthens the consistency within the EU regulatory framework, and ensures a practicable and proportionate approach.

##### Question 6

Do you agree with our analysis of costs and benefits of the proposals in this Consultation Paper? If not, can you provide data to justify your position or further inform our analysis of the likely impact of the proposals?

## 5.2 Overview of questions for consultation

### Questions related to the draft RTS

Q1	Do you agree with the list of quantitative indicators for credit institutions provided in Annex I?
Q2	Do you agree with the calibration of the total quantitative threshold for credit institutions? Do you expect any unintended consequences arising from applying that threshold? If yes, please provide details on these consequences.
Q3	Do you agree with the list of qualitative considerations for credit institutions?
Q4	Do you agree with the list of quantitative indicators for investment firms provided in Annex II?
Q5	Do you agree with the list of qualitative considerations for investment firms?

### Questions related to the Impact Assessment

Q6	Do you agree with our analysis of costs and benefits of the proposals in this Consultation Paper? If not, can you provide data to justify your position or further inform our analysis of the likely impact of the proposals?
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